

AN ORDINANCE AUTHORIZING THE CITY OF CREVE COEUR, MISSOURI, TO EXECUTE A SECOND AMENDED AND RESTATED TRANSPORTATION DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE KOMAN GROUP, L.L.C.; AUTHORIZING THE TAKING OF OTHER ACTIONS, APPROVAL AND EXECUTION OF OTHER DOCUMENTS NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF; AND CONTAINING A SEVERABILITY CLAUSE

WHEREAS, the City has adopted Ordinance Nos. 2267, 2282, 2291, 3012 and 3042 authorizing the City to execute an Amended and Restated Transportation Development Agreement dated as of March 1, 2005 (the "*Prior Agreement*"), by and among the City, The Koman Group, L.L.C. (the "*Developer*") and various affiliates of the Developer and authorizing the City to join the Developer and its affiliates in the creation of a transportation development district to finance certain transportation project improvements; and

WHEREAS, on July 14, 2003, the City adopted Resolution No. 541 authorizing the City to join in a petition to the St. Louis County Circuit Court to create a transportation development district and approving a Term Sheet for the Prior Agreement with the Developer; and

WHEREAS, the City and the Developer have entered into the Prior Agreement to provide for certain transportation-related improvements along Olive Boulevard east of Interstate 270 within the City, which improvements are intended to be located generally along Olive Boulevard from the eastern edge of West Oak Center to Orchard Lakes Drive and generally along New Ballas Road from Studt Avenue to Olive Boulevard; and

WHEREAS, on May 3, 2004, the City, the Developer and various other owners of record of real property within the City, which authorized the Developer to act as their legally authorized representative, joined in a petition to the St. Louis County Circuit Court for the creation of a transportation development district (the "*District*") pursuant to the Missouri Transportation Development District Act Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "*TDD Act*"); and

WHEREAS, the City has adopted Resolution Nos. 556, 600, 608, 633, 650, 659, 702 and 752 consenting to the inclusion of additional properties within the District's boundaries, to additional activities related to the Transportation Project, to the use of TDD Revenues attributable to the TDD Sales Tax imposed within Sub-Area 2 of the District to be used to finance either the Primary Transportation Project (as defined in the Prior Agreement) or the Additional Transportation Project (as defined in the Prior Agreement) or both and to limited waivers of certain requirements contained in the Prior Agreement regarding the commencement and completion of the Developer Project (as defined herein); and

WHEREAS, on September 9, 2004, the District was created for the purpose of constructing and providing tax revenues for funding one or more "projects" within the meaning of Section 238.202.1(5) of the TDD Act, which projects are further described in the Prior Agreement (the "*Transportation Project*"), and by court order is subject to and bound by the terms of the Prior Agreement, as it may be amended by the parties; and

WHEREAS, on April 29, 2005, the Court entered an order adjusting the boundaries of the District to add approximately 12.75 acres of adjacent real property to the boundaries of the District; and

WHEREAS, on December 16, 2009, the Court entered a second order adjusting the boundaries of the District to add approximately 1.96 acres of adjacent real property to the boundaries of the District; and

WHEREAS, on July 7, 2005, pursuant to Section 238.242 of the TDD Act, the District issued its \$5,090,000 Transportation Sales Tax and Special Assessment Revenue Bonds, Series 2005 (the "*Series 2005 Bonds*"), for the purpose of financing the Primary Transportation Project, funding capitalized interest on the Series 2005 Bonds, funding a debt service reserve fund and paying the costs of issuance of the Series 2005 Bonds, which Series 2005 Bonds are secured by a Trust Indenture dated as of June 1, 2005 between the District and UMB Bank, N.A., as trustee (a "*Trustee*"), as supplemented by that First Supplemental Trust Indenture dated as of November 1, 2007 between the District and the Trustee (as supplemented, a "*Trust Indenture*"); and

WHEREAS, pursuant to the Prior Agreement, the Developer agreed to cooperate with the City in the collection of such taxes levied by the District and also agreed to construct or cause to be constructed certain additional public and private transportation improvements, as further described therein; and

WHEREAS, the District and the Missouri Highways and Transportation Commission (the "*Commission*") have entered into a Missouri Highways and Transportation Commission Transportation Development District Cooperative Agreement dated December 14, 2004 (as may be amended from time to time, the "*Commission Agreement*"), pursuant to which the District has agreed to undertake the State Transportation Project (as defined in the Prior Agreement) that may be dedicated to the Commission upon completion and, to the extent that the Commission agrees to take dedication of such State Transportation Project, the Commission will review plans and specifications pertaining to such State Transportation Project; and

WHEREAS, on September 8, 2007, the City adopted Resolution No. 751 approving the District's phased approach to the Transportation Project and approving a plan of finance for the portion of the Transportation Project known as Reduced Scope Phase I and Minimum Phase II, contingent upon the availability of sufficient funding; and

WHEREAS, the City, the District, the Developer, Caplaco Nine, Inc. ("*Caplaco*"), and Dierbergs Markets, Inc. ("*Dierbergs*") have entered into a Term Sheet Regarding Plan of Finance dated November 6, 2007 (the "*Term Sheet*"), pursuant to which the parties agreed to cooperate to provide a plan of finance for funding that portion of Reduced Scope Phase I and Minimum Phase II that cannot be funded out of the proceeds of the Series 2005 Bonds, which cooperation includes without limitation Caplaco filing a petition to create the West Oak Transportation Development District (the "*West Oak TDD*") for the purpose of levying a transportation development district sales tax to fund a portion of Reduced Scope Phase I and Minimum Phase II; and

WHEREAS, the District and the City intend to enter into an Amended and Restated Intergovernmental Cooperation Agreement (the "*Cooperation Agreement*"), pursuant to which the District agrees to undertake the City Transportation Project (as defined therein) that may be

dedicated to the City upon completion and to use reasonable efforts to finance Reduced Scope Phase I and Minimum Phase II and the City agrees to provide certain project management services in connection with Reduced Scope Phase I and Minimum Phase II and to provide for the collection of the TDD Special Assessment (as defined therein) on behalf of the District and will receive a fee of up to one percent of the amount collected to cover the costs of collection; and

WHEREAS, the City and the Developer desire to amend and restate the Prior Agreement for the following purposes: (a) to consolidate the construction-related obligations of the Developer into The Koman Group, L.L.C. without releasing any obligations of the Developer and its affiliates that run with the land and which pertain to their status as property owners (b) to identify the remaining scope and schedule for completion of the Developer Project and to permit reduction of the letter of credit pertaining to the Developer Project, (c) to authorize the District to levy the TDD Special Assessment at the maximum amount in order to generate additional revenues to fund a portion of Reduced Scope Phase I and Minimum Phase II, (d) to provide for a letter of credit from the Developer to secure payment of cost-overruns for Reduced Scope Phase I and Minimum Phase II in excess of the Project Funding Amount (as defined in the hereinafter described Second Amended and Restated Agreement), (e) to provide for the acquisition of interests in real property necessary for Reduced Scope Phase I and Minimum Phase II, (f) to provide for the District's issuance of its Supplemental and Subordinate Obligations (as defined in the Second Amended and Restated Agreement) to fund a portion of Reduced Scope Phase I and Minimum Phase II, to repay a loan made to the District by Caplaco and Dierbergs to fund a portion of the Additional Transportation Project, to fund some of the costs of formation of the West Oak TDD and to pay Issuance Costs of the Supplemental and Subordinate Obligations, and (g) to require that the City use reasonable efforts to secure funding for Remaining Phase II (as defined in the Second Amended and Restated Agreement) of the Transportation Project; and

WHEREAS, the City, the District and the Developer anticipate entering into a Cooperation Agreement with the West Oak TDD (the "*West Oak Cooperation Agreement*") to provide for the District's issuance of the Supplemental and Subordinate Obligations and to provide for the West Oak TDD's appropriation of its transportation development district sales tax solely for repayment of the Supplemental and Subordinate Obligations; and

WHEREAS, Section 7.8 of the Prior Agreement provides that the Prior Agreement shall be amended only in writing and effective only when signed by the authorized agents of the parties; and

WHEREAS, the City is willing to consent to the proposed amendment and restatement of the Prior Agreement as identified herein and is willing to enter into a Second Amended and Restated Transportation Development Agreement in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference (a "*Second Amended and Restated Agreement*").

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby finds and determines that it is necessary and desirable to enter into a Second Amended and Restated Agreement with the Developer in order to: (a) consolidate the construction-related obligations of the Developer into The Koman Group,

L.L.C. without releasing any obligations of the Developer and its affiliates that run with the land and which pertain to their status as property owners (b) identify the remaining scope and schedule for completion of the Developer Project and to permit reduction of the letter of credit pertaining to the Developer Project, (c) authorize the District to levy the TDD Special Assessment at the maximum amount in order to generate additional revenues to fund a portion of Reduced Scope Phase I and Minimum Phase II, (d) provide for a letter of credit from the Developer to secure payment of cost-overruns for Reduced Scope Phase I and Minimum Phase II in excess of the Project Funding Amount (as defined therein), (e) provide for the acquisition of interests in real property necessary for Reduced Scope Phase I and Minimum Phase II, (f) provide for the District's issuance of its Supplemental and Subordinate Obligations (as defined therein) to fund a portion of Reduced Scope Phase I and Minimum Phase II, to repay a loan made to the District by Caplaco and Dierbergs to fund a portion of the Additional Transportation Project, to fund some of the costs of formation of the West Oak TDD and to pay Issuance Costs of the Supplemental and Subordinate Obligations, and (g) require that the City use reasonable efforts to secure funding for Remaining Phase II (as defined therein) of the Transportation Project.

Section 2. The City Council hereby approves, and the City Administrator is hereby authorized and directed to execute, on behalf of the City, the Second Amended and Restated Agreement between the City and the Developer, and the City Clerk is hereby authorized and directed to attest to the Second Amended and Restated Agreement and to affix the seal of the City thereto. The Second Amended and Restated Agreement shall be in substantially the form attached hereto as **Exhibit A**, with such changes therein as shall be approved by the officers of the City executing the same and as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

Section 3. The City Administrator or his designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator or his designated representatives are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

Section 4. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

Section 5. All resolutions or ordinances or parts of resolutions or ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. This Ordinance shall become effective pursuant to Section 3.11(g) of the City Charter.

SUBSTITUTE BILL No 5242

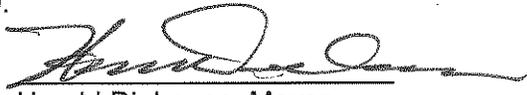
ORDINANCE No 5152

Adopted by the City Council this 27 day of September, 2010.



A.J. Wang,
City Council President

Approved this 27 day of September, 2010.



Harold Dielmann, Mayor

Attest:



Deborah Ryan, CMC
City Clerk

**SECOND AMENDED AND RESTATED
TRANSPORTATION DEVELOPMENT AGREEMENT**

By and Between the

CITY OF CREVE COEUR, MISSOURI

And

THE KOMAN GROUP, L.L.C.,

Dated as of

October 1, 2010

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**SECOND AMENDED AND RESTATED
TRANSPORTATION DEVELOPMENT AGREEMENT**

THIS SECOND AMENDED AND RESTATED TRANSPORTATION DEVELOPMENT AGREEMENT is made and entered into as of this 1st day of October, 2010, by and between the **CITY OF CREVE COEUR, MISSOURI**, a municipal corporation organized and existing under the laws of the State of Missouri (the "*City*"), and **THE KOMAN GROUP, L.L.C.**, a Missouri limited liability company (the "*Developer*"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in **Article I** of this Agreement.

RECITALS

1. The City has adopted Ordinance Nos. 2267, 2282, 2291, 3012 and 3042 authorizing the City to execute an Amended and Restated Transportation Development Agreement dated as of March 1, 2005 (the "*Prior Agreement*"), by and among the City, the Developer and various affiliates of the Developer and authorizing the City to join the Developer and its affiliates in the creation of a transportation development district to finance certain transportation project improvements.

2. On July 14, 2003, the City adopted Resolution No. 541 authorizing the City to join in a petition to the St. Louis County Circuit Court to create a transportation development district and approving a Term Sheet for the Prior Agreement with the Developer.

3. The City and the Developer have entered into the Prior Agreement to provide for certain transportation-related improvements along Olive Boulevard east of Interstate 270 within the City, which improvements are intended to be located generally along Olive Boulevard from the eastern edge of West Oak Center to Orchard Lakes Drive and generally along New Ballas Road from Studt Avenue to Olive Boulevard.

4. On May 3, 2004, the City, the Developer and various other owners of record of real property within the City, which authorized the Developer to act as their legally authorized representative, joined in a petition to the St. Louis County Circuit Court (the "*Court*") for the creation of a transportation development district (the "*District*") pursuant to the Missouri Transportation Development District Act Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "*TDD Act*").

5. The City has adopted Resolution Nos. 556, 600, 608, 633, 650, 659, 702 and 752 consenting to the inclusion of additional properties within the District's boundaries, to additional activities related to the Transportation Project, to the use of TDD Revenues attributable to the TDD Sales Tax imposed within Sub-Area 2 of the District to be used to finance either the Primary Transportation Project (as defined herein) or the Additional Transportation Project (as defined herein) or both and to limited waivers of certain requirements contained in the Prior Agreement regarding the commencement and completion of the Developer Project (as defined herein).

6. On September 9, 2004, the District was created for the purpose of constructing and providing tax revenues for funding one or more "projects" within the meaning of Section 238.202.1(5) of the TDD Act, which projects are further described herein (the "*Transportation Project*"), and by court order is subject to and bound by the terms of the Prior Agreement, as it may be amended by the parties.

7. On April 29, 2005, the Court entered an order adjusting the boundaries of the District to add approximately 12.75 acres of adjacent real property to the boundaries of the District.

8. On December 16, 2009, the Court entered a second order adjusting the boundaries of the District to add approximately 1.96 acres of adjacent real property to the boundaries of the District.

9. On July 7, 2005, pursuant to Section 238.242 of the TDD Act, the District issued its \$5,090,000 Transportation Sales Tax and Special Assessment Revenue Bonds, Series 2005 (the "*Series 2005 Bonds*"), for the purpose of financing the Primary Transportation Project, funding capitalized interest on the Series 2005 Bonds, funding a debt service reserve fund and paying the costs of issuance of the Series 2005 Bonds, which Series 2005 Bonds are secured by a Trust Indenture dated as of June 1, 2005 between the District and UMB Bank, N.A., as trustee (a "*Trustee*"), as supplemented by that First Supplemental Trust Indenture dated as of November 1, 2007 between the District and the Trustee (as supplemented, a "*Trust Indenture*").

10. Pursuant to this Agreement, the Developer agrees to cooperate with the City in the collection of taxes levied by the District and also agrees to construct or cause to be constructed certain additional public and private transportation improvements, as further described herein.

11. The District and the Missouri Highways and Transportation Commission (the "*Commission*") have entered into a Missouri Highways and Transportation Commission Transportation Development District Cooperative Agreement dated December 14, 2004 (as may be amended from time to time, the "*Commission Agreement*"), pursuant to which the District has agreed to undertake the State Transportation Project (as defined herein) that may be dedicated to the Commission upon completion and, to the extent that the Commission agrees to take dedication of such State Transportation Project, the Commission will review plans and specifications pertaining to such State Transportation Project.

12. On September 8, 2007, the City adopted Resolution No. 751 approving the District's phased approach to the Transportation Project and approving a plan of finance for the portion of the Transportation Project known as Reduced Scope Phase I and Minimum Phase II, contingent upon the availability of sufficient funding.

13. The City, the District, the Developer, Caplaco Nine, Inc. ("*Caplaco*"), and Dierbergs Markets, Inc. ("*Dierbergs*") have entered into a Term Sheet Regarding Plan of Finance dated November 6, 2007 (the "*Term Sheet*"), pursuant to which the parties agreed to cooperate to provide a plan of finance for funding that portion of Reduced Scope Phase I and Minimum Phase II that cannot be funded out of the proceeds of the Series 2005 Bonds, which cooperation includes without limitation Caplaco filing a petition to create the West Oak Transportation Development District (the "*West Oak TDD*") for the purpose of levying a transportation development district sales tax to fund a portion of Reduced Scope Phase I and Minimum Phase II.

14. The District and the City plan to enter into an Amended and Restated Intergovernmental Cooperation Agreement dated as of October 1, 2010 (the "*Cooperation Agreement*"), pursuant to which the District would agree to undertake the City Transportation Project (as defined herein) that may be dedicated to the City upon completion and to use reasonable efforts to finance Reduced Scope Phase I and Minimum Phase II and the City would agree to provide certain project management services in connection with Reduced Scope Phase I and Minimum Phase II and to provide for the collection of the TDD Special Assessment (as defined herein) on behalf of the District and receive a fee of up to one percent of the amount collected to cover the costs of collection.

15. The City and the Developer desire to amend and restate the Prior Agreement for the following purposes: (a) to consolidate the construction-related obligations of the Developer into The Koman Group, L.L.C. without releasing any obligations of the Developer and its affiliates that run with the land and which pertain to their status as property owners (b) to identify the remaining scope and

schedule for completion of the Developer Project and to permit reduction of the letter of credit pertaining to the Developer Project, (c) to authorize the District to levy the TDD Special Assessment at the maximum amount in order to generate additional revenues to fund a portion of Reduced Scope Phase I and Minimum Phase II, (d) to provide for a letter of credit from the Developer to secure payment of cost-overruns for Reduced Scope Phase I and Minimum Phase II in excess of the Project Funding Amount (as defined herein), (e) to provide for the acquisition of interests in real property necessary for Reduced Scope Phase I and Minimum Phase II, (f) to provide for the District's issuance of its Supplemental and Subordinate Obligations (as defined herein) to fund a portion of Reduced Scope Phase I and Minimum Phase II, to repay a loan made to the District by Caplaco and Dierbergs to fund a portion of the Additional Transportation Project, to fund some of the costs of formation of the West Oak TDD and to pay Issuance Costs of the Supplemental and Subordinate Obligations, and (g) to require that the City use reasonable efforts to secure funding for Remaining Phase II (as defined herein) of the Transportation Project.

16. The City, the District and the Developer anticipate entering into a Cooperation Agreement with the West Oak TDD (the "*West Oak Cooperation Agreement*") to provide for the District's issuance of the Supplemental and Subordinate Obligations and to provide for the West Oak TDD's appropriation of its transportation development district sales tax solely for repayment of the Supplemental and Subordinate Obligations.

17. Section 7.8 of the Prior Agreement provides that the Prior Agreement shall be amended only in writing and effective only when signed by the authorized agents of the parties.

18. The City and the Developer are willing to consent to the proposed amendment and restatement of the Prior Agreement as identified herein and are willing to enter into this Agreement, in anticipation of execution of the West Oak Cooperation Agreement.

19. The City and the Developer hereby formalize and memorialize their commitment with respect to the District to facilitate the projects described in 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, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

"*Additional Transportation Project*" means that portion of the Transportation Project that is generally described in **Exhibit C**, attached hereto and incorporated herein by reference.

"*Agreement*" means this Second Amended and Restated Transportation Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

"*Bond Counsel*" means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys selected by the District and acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political

subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

"Bond Proceeds" means the gross cash proceeds from the sale of TDD Obligations before payment of Issuance Costs, together with any interest earned thereon.

"Bond Resolution" means the resolution(s) to be adopted by the District's Board of Directors authorizing the TDD Obligations, any trust indenture relating thereto, and all related ordinances, resolutions and proceedings.

"Caplaco" means Caplaco Nine, Inc., a Missouri corporation, or its permitted successors or assigns in interest.

"City" means the City of Creve Coeur, Missouri, a home rule charter city and political subdivision of the State of Missouri, and a local transportation authority within the meaning of Section 238.202.1(4) and 238.207.4(2) of the TDD Act.

"City Council" means the City Council of the City.

"City Administrator" means the City Administrator of the City.

"City Transportation Project" means, subject to City approval, the following portions of the Transportation Project: (a) that portion of paragraphs 4 and 14 of the Primary Transportation Project and that portion of paragraph 4 of the Additional Transportation Project that are located outside of existing Commission right-of-way; (b) paragraphs 9, 10, 11 12, 13 and 15 of the Primary Transportation Project; and (c) that portion of paragraphs 16 and 17 of the Primary Transportation Project that is related to items (a) and (b) above and that portion of paragraphs 5 and 6 of the Additional Transportation Project that is related to items (a) and (b) above.

"Commission" means the Missouri Highways and Transportation Commission created under the provisions of Sections 226.010 to 226.190 of the Revised Statutes of Missouri, as amended and the Missouri Department of Transportation created by Section 226.005 of the Revised Statutes of Missouri, as amended, which is in charge of the Missouri Highways and Transportation Commission as provided by the Constitution and laws of the State.

"Commission Agreement" means the Missouri Highways and Transportation Commission Transportation Development District Cooperative Agreement entered into between the Commission and the District dated December 14, 2004, as may be amended from time to time, pursuant to which the District agreed to undertake the State Transportation Project that may be dedicated to the Commission upon completion and, to the extent that the Commission agrees to take dedication of such State Transportation Project, the Commission will review plans and specifications pertaining to such State Transportation Project.

"Construction Plans" means, subject to City, County or Commission approval, as applicable, the plans, drawings, specifications and related documents, and construction schedules for the construction of the Developer Project or Transportation Project, as applicable, together with all supplements, amendments or corrections, submitted by the Developer or the District and approved by the City, the County or the Commission, as applicable, in accordance with this Agreement, the Cooperation Agreement and the Commission Agreement.

“*Consulting Engineer*” means Crawford, Bunte, Brammeier, or such other engineer or architect licensed in the State of Missouri and retained by the Developer or the District with the consent of the City for the purpose of developing plans and specifications for the Transportation Project.

“*Cooperation Agreement*” means the Amended and Restated Intergovernmental Cooperation Agreement to be entered into between the City and the District, pursuant to which the District would agree to undertake the City Transportation Project (as defined herein) that may be dedicated to the City upon completion and to use reasonable efforts to finance Reduced Scope Phase I and Minimum Phase II and the City would agree to provide certain project management services in connection with Reduced Scope Phase I and Minimum Phase II and to provide for the collection of the TDD Special Assessment (as defined herein) on behalf of the District and receive a fee of up to one percent of the amount collected to cover the costs of collection (and, until execution of the Amended and Restated Intergovernmental Cooperation Agreement, the Intergovernmental Cooperation Agreement dated as of May 1, 2005 between the City and the District).

“*County*” means St. Louis County, Missouri, acting by and through its Department of Highways & Traffic.

“*Court*” means the St. Louis County Circuit Court, 21st Judicial Circuit, State of Missouri.

“*CPI*” means the consumer price index reported in the U.S. Department of Labor, Bureau of Labor Statistics Report for All Urban Consumers – U.S. City Average.

“*Developer*” means The Koman Group, L.L.C., a Missouri limited liability company, or its permitted successors or assigns in interest.

“*Developer Litigation*” means St. Louis County Circuit Court Cause No. 08SL—CC05031, captioned *Cornerstone Opportunity Ventures LLC v. 11505 Olive LLC*, in which the Developer has been named as a third party defendant.

“*Developer Project*” means certain public and private improvements within the City to be undertaken by the Developer in accordance with this Agreement, as generally described in **Exhibit D**, attached hereto and incorporated herein by reference.

“*Dierbergs*” means Dierbergs Markets, Inc., a Missouri corporation, or its permitted successors or assigns in interest.

“*District*” means the Olive Boulevard Transportation Development District created in accordance this Agreement, which District includes the real property identified on **Exhibit A**, attached hereto and incorporated herein by reference, and such other contiguous real property as may be included in accordance with the terms and conditions of this Agreement.

“*Excess TDD Special Assessment Revenues*” means that portion of the revenues of the TDD Special Assessment not pledged to repayment of the Series 2005 Bonds.

“*Financial Advisor*” means Stifel, Nicolaus & Company Incorporated, or such other financial advisor designated by the District with the consent of the Developer, Caplaco, Dierbergs and the West Oak TDD in connection with the District’s issuance of the Supplemental and Subordinate Obligations.

“*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 Developer Project or the Transportation Project, as applicable.

“Issuance Costs” means all costs reasonably incurred by the District in furtherance of the issuance of TDD Obligations, including but not limited to the fees and expenses of the Financial Advisor and consultants, the District’s attorneys (including issuer’s counsel and Bond Counsel), the District’s administrative fees and expenses (including fees and costs of planning consultants), underwriters’ discounts and fees, the costs of printing any TDD Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TDD Obligations.

“Loan” means a loan in the amount of \$700,000 provided by Caplaco and Dierbergs to the District to fund a portion of the Additional Transportation Project.

“Maintenance Agreement” means the Public Access Road Easement Agreement that may be entered into between the City and the Developer (or its affiliates, transferees or successors in interest that own or may in the future own any real property upon which the Developer Project is constructed) in substantially the form of **Exhibit H**, attached hereto and incorporated herein by reference, or such other form of agreement acceptable to the City in its sole discretion, pursuant to which the Developer (or its affiliates, transferees or successors in interest that own or may in the future own any real property upon which the Developer Project is constructed) would be obligated to maintain the improvements constructed on any rights-of-way dedicated as public or conveyed to the City in connection with the Developer Project.

“Mayor” means the Mayor of the City.

“Notice of Completion” means a notice in substantially the form of **Exhibit G**, attached hereto and incorporated herein by reference, provided by the Developer to the City in accordance with **Section 2.13** of this Agreement.

“Operating Fund” means the Operating Fund established in calendar year 2005 pursuant to the applicable Bond Resolution for the purpose of paying on-going TDD Administrative Costs, into which up to \$20,000 (increased each year since 2005 by a percentage equal to the percentage increase in CPI for the preceding calendar year) of TDD Revenues shall be deposited annually and disbursed in accordance with the Bond Resolution and **Sections 5.3 and 6.1** of this Agreement.

“Primary Transportation Project” means that portion of the Transportation Project generally described in **Exhibit B**, attached hereto and incorporated herein by reference.

“Prior Agreement” means the Amended and Restated Transportation Development Agreement dated as of March 1, 2005, by and among the City, The Koman Group, L.L.C., Cornerstone I, L.L.C., Cornerstone II, L.L.C., Cornerstone III, L.L.C., Cornerstone III – Mixed Use, LLC, Cornerstone IV, L.L.C., Cornerstone IV – West Campus, LLC, Cornerstone V, LLC, CP North I, LLC, CP North II, LLC, CP South I, LLC, CP South II, LLC, Swansea Acquisitions, L.L.C., and Oaks Holdings, L.L.C.

“Project Fund” means the Project Fund established pursuant to the applicable Bond Resolution and **Section 5.2** of this Agreement and from which moneys are disbursed pursuant to the applicable Bond Resolution and **Section 6.1** of this Agreement.

“Project Funding Amount” means the estimated actual cost of completing Reduced Scope Phase I and Minimum Phase II determined at the time of award of the bid and contract for construction of Reduced Scope Phase I and Minimum Phase II based upon actual bids received and/or contracts awarded, (reduced by (a) the remaining amount of Bond Proceeds of the Series 2005 Bonds, (b) the remaining amount of Loan proceeds and (c) any contributions received by the City or the District from third parties for that portion of Reduced Scope Phase I and Minimum Phase II involving the installation of streetlights and sidewalks along New Ballas Road between Studt Avenue and Olive Boulevard).

“Reduced Scope Phase I and Minimum Phase II” means that portion of the Transportation Project described on **Exhibit E**, attached hereto and incorporated herein by reference.

“Reimbursable Transportation Project Costs” means those Transportation Project Costs and TDD Administrative Costs advanced by the Developer in accordance with **Section 2.06** of this Agreement, for which the Developer has received reimbursement out of the proceeds of the TDD Obligations, as provided for in this Agreement.

“Remaining Phase II” means that portion of the Transportation Project not included in Reduced Scope Phase I and Minimum Phase II, as described on **Exhibit F**, attached hereto and incorporated herein by reference.

“Series 2005 Bonds” means the District’s \$5,090,000 Transportation Sales Tax and Special Assessment Revenue Bonds, Series 2005.

“State Transportation Project” means, subject to Commission approval, the following portions of the Transportation Project: (a) paragraphs 1 through 3 of the Primary Transportation Project; (b) paragraphs 5 through 8 of the Primary Transportation Project; (c) paragraphs 1 through 3 of the Additional Transportation Project; (d) that portion of paragraphs 4 and 14 of the Primary Transportation Project and that portion of paragraph 4 that is located within existing Commission right-of-way; and (e) that portion of paragraphs 16 and 17 of the Primary Transportation Project and that portion of paragraphs 5 and 6 of the Additional Transportation Project that is related to items (a) through (d) above.

“Sub-Area 1” means that portion of the real property within the boundaries of the District that is located west of Craig Road and any other contiguous real property subsequently included within the boundaries of the District, except for such real property specifically included in Sub-Area 2.

“Sub-Area 2” means that portion of the real property within the boundaries of the District that is located east of Craig Road.

“Supplemental and Subordinate Obligations” means notes, bonds or other obligations issued by the District pursuant to the TDD Act and this Agreement for the purpose of repaying the Loan, paying a portion of the costs of formation of the West Oak TDD not to exceed \$150,000, funding a portion of Reduced Scope Phase I and Minimum Phase II, and paying Issuance Costs of the Supplemental and Subordinate Obligations.

“TDD Act” means the Missouri Transportation Development District Act, Sections 238.200 through 238.275 of the Revised Statutes of Missouri, as amended.

“TDD Administrative Costs” means expenses of the District for administration, supervision and inspection incurred in connection with the Transportation Project and paid out of the Operating Fund established with a Trustee pursuant to a Bond Resolution, which expenses include without limitation the following: (a) reimbursement of the board of directors of the District for actual expenditures in the

performance of duties on the behalf of the District pursuant to Section 238.222 of the TDD Act; (b) expenses incurred in the exercise of the contractual powers of the District pursuant to Section 238.250 of the TDD Act; (c) reimbursement of the petitioners for the costs of filing and defending the petition to establish the District and all publication and incidental costs incurred in obtaining the Court's certification of the petition pursuant to Section 238.217 of the TDD Act; (d) Issuance Costs related to the TDD Obligations; (e) the cost of insurance obtained by the District pursuant to Section 238.255 of the TDD Act; (f) the cost of any audit by the state auditor pursuant to Section 238.272 of the TDD Act; (g) expenses incurred by the District in the exercise of the powers granted under Section 238.252 of the TDD Act, which consist of compensation of employees or contractors, suits by or against the District, the purchase of personal property necessary or convenient for the District's activities, and the collection and disbursement of funds for District activities; and (h) expenses incurred by the District in connection with abolishment of the District in accordance with Section 238.275 of the TDD Act.

"TDD Obligations" means bonds, notes or other obligations issued by the District pursuant to the TDD Act and this Agreement, including without limitation the Series 2005 Bonds and the Supplemental and Subordinate Obligations.

"TDD Revenues" means the proceeds of the TDD Sales Tax and the TDD Special Assessment deposited into the TDD Sales Tax Trust Fund and the TDD Special Assessment Trust Fund respectively, in accordance with the TDD Act, after deducting the cost of collection of one percent (1%) of the total amount collected. TDD Revenues shall not include any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or any sum received by the District that is the subject of a suit or other claim communicated to the District, which suit or claim challenges the collection of such sum, until such suit or other claim is withdrawn or resolved against the taxpayer.

"TDD Sales Tax" means the transportation development district sales tax levied in accordance with the TDD Act and this Agreement at a rate not to exceed one-half of one percent (1/2%).

"TDD Special Assessment" means the special assessment levied against each tract, lot or parcel of real property within the District with equalized assessed valuation in excess of \$4,000,000 as of December 31, 2004, provided that such special assessment shall not apply to any such real property if a majority of the square feet of improvements upon such real property was, as of December 31, 2004, primarily engaged in (or, if then vacant, was most recently primarily engaged in) the business of sales at retail within the meaning of the Sales Tax Law, Sections 144.010 to 144.525 of the Revised Statutes of Missouri, as amended, as determined by the District (the properties subject to the special assessment consist of three tax parcels having locator numbers 17O640299 (formerly 17O620994 and formerly 17O620233), 17O640288 (formerly 17O640222) and 17O621005 (formerly 17O620983)).

"Term Sheet" means the Term Sheet Regarding Plan of Finance dated as of November 6, 2007, among the City, the District, the Developer, Caplaco and Dierbergs.

"Transportation Project" means those "projects" as defined by Section 238.202(5) of the TDD Act that are generally set forth in **Exhibits B, C, E and F**, attached hereto and incorporated herein by reference.

"Transportation Project Costs" means all costs necessary or incidental to plan, acquire, finance, develop, design and construct the Transportation Project, including without limitation: (a) costs of all estimates, studies, surveys, plans, drawings, reports, tests, specifications and other preliminary investigations of architects, appraisers, surveyors and engineers; (b) all professional service costs, including without limitation architectural, engineering, legal, financial, planning, design or special services incurred; (c) costs of acquisition of right-of-way, easements, leases and other interests in real

property; (d) costs of demolition of buildings and improvements, the clearing and grading of land, site preparation, and erosion and storm water control; and (e) costs of construction of any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, light rail or other mass transit and any similar or related improvement or infrastructure.

“*Trust Indenture*” means the Trust Indenture dated as of June 1, 2005 between the District and the Trustee, as supplemented by that First Supplemental Trust Indenture dated as of November 1, 2007 between the District and the Trustee, as such may be supplemented from time to time, or such other trust indenture or supplemental trust indenture relating to the TDD Obligations.

“*Trustee*” means UMB Bank, N.A., St. Louis, Missouri, and its successor or successors and any other association or corporation which at any time may be substituted in its place pursuant to and at the time serving as trustee under a Trust Indenture.

“*West Oak Cooperation Agreement*” means the Cooperation Agreement to be entered into among the City, the District, the Developer and the West Oak TDD to provide for the District’s issuance of the Supplemental and Subordinate Obligations and to provide for the West Oak TDD’s appropriation of its transportation development district sales tax for repayment of the Supplemental and Subordinate Obligations.

“*West Oak TDD*” means the West Oak Transportation Development District to be formed by a petition filed with the Court by Caplaco in accordance with the TDD Act for the purpose of levying a transportation development district sales tax to be appropriated for repayment of the District’s Supplemental and Subordinate Obligations.

“*West Oak TDD Revenues*” means the proceeds of the West Oak TDD Sales Tax that are deposited into a special trust fund established by the West Oak TDD in accordance with the TDD Act, after deducting the cost of collection of one percent (1%) of the total amount collected. West Oak TDD Revenues shall not include any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or any sum received by the West Oak TDD that is the subject of a suit or other claim communicated to the West Oak TDD, which suit or claim challenges the collection of such sum, until such suit or other claim is withdrawn or resolved against the taxpayer.

“*West Oak TDD Sales Tax*” means the transportation development district sales tax to be imposed by the West Oak TDD at a rate of not less than three eighths of one percent (3/8%) pursuant to Section 238.235 of the TDD Act and the West Oak Cooperation Agreement.

Section 1.02 Rules of Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons. All references in this Agreement to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed.

Section 1.03 Recitals. All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

Section 1.04 Intent. The City and the Developer have prepared this Agreement in the form of a restatement in order to facilitate clear understanding of prospective obligations. The Prior Agreement

remains applicable to actions taken prior to the date of execution of this Agreement in compliance with the terms and conditions which applied at the time.

ARTICLE II. DEVELOPER TO ACQUIRE AND CONSTRUCT DEVELOPER PROJECT

Section 2.01 Construction of the Developer Project. The Developer shall acquire all property and perform all work necessary to construct the Developer Project as generally described in **Exhibit D**, attached hereto and incorporated herein by reference. The City has granted final approval of Construction Plans for the Developer Project, which approval shall not be construed in any way as a limitation on the City's authority to subsequently reject any aspect of a proposed change to the Developer Project. The Developer shall construct the Developer Project in accordance with all Governmental Approvals. The parties acknowledge that, as of the date of execution of this Agreement, the Developer has submitted and the City has accepted a Notice of Completion of items 2, 3, 5 and 7 of the Developer Project as generally described on **Exhibit D**, attached hereto and incorporated herein by reference.

Section 2.02 Construction Schedule for Developer Project. As of the date of this Agreement, the Developer has commenced construction of items 1 and 4 of the Developer Project, but has been unable to complete construction of such portions of the Developer Project due to the Developer Litigation. The Developer shall obtain all Governmental Approvals and other necessary approvals, including without limitation the City, the County and the Metropolitan St. Louis Sewer District, in order to complete or cause the completion of the remaining portions of the Developer Project as follows, subject to any delay caused by an event of force majeure as provided for in **Section 7.04** of this Agreement:

(a) completion of items 1 and 4 of the Developer Project within 180 days after final disposition of the Developer Litigation in favor of the Developer;

(b) completion of item 6 of the Developer Project in conjunction with the District's completion of item 11 of the Primary Transportation Project, provided that the Developer shall be relieved of its obligation to complete item 6 of the Developer Project as provided in **Section 2.04(b)** of this Agreement; and

(c) completion of item 8 of the Developer Project in conjunction with the construction of permanent site improvements upon the property located at the northeast corner of Olive Boulevard and CityPlace Drive (currently consisting of three tax parcels having locator numbers 17N410071, 17N410147 and 17N410804), but in no event shall item 8 of the Developer Project be completed later than December 31, 2013, provided that the Developer shall be relieved of its obligation to complete item 8 of the Developer Project as provided in **Section 2.08** of this Agreement.

In the event of any delay caused by an event of force majeure, the Developer shall be granted additional time to commence and complete such portions of the Developer Project. If, upon final disposition of the Developer Litigation, the Developer is unable to complete the Developer Project as currently contemplated by the approved site plans and construction plans, the Developer shall revise such site plans and construction plans in accordance with **Section 2.01** of this Agreement and the City and the Developer shall use reasonable efforts to provide for a revised schedule for the Developer's completion of the Developer Project.

Section 2.03 Developer to Pay Costs of Developer Project; Escrow of Funds. The Developer has paid and agrees to pay all costs as necessary to acquire all property and complete all work necessary to construct the Developer Project. Prior to the date of issuance of the Series 2005 Bonds, the Developer provided to the City an irrevocable letter of credit in the amount of \$560,000 naming the City and the

District as beneficiaries. If, prior to the date of issuance of the Supplemental and Subordinate Obligations, the Developer has not provided a Notice of Completion of Developer Project in substantially the form of **Exhibit G**, attached hereto and incorporated herein by reference, the Developer shall replace the existing letter of credit with a replacement irrevocable letter or letters of credit naming the City and the District as beneficiaries, or such other bond or security instrument as the City may accept in its sole discretion, in an amount reasonably sufficient to complete the Developer Project, which amount shall be reasonably determined by the Consulting Engineer in accordance with this Section, provided that the amount of such letter or letters of credit or other bond or security instrument shall not exceed \$500,000. The letter or letters of credit shall be in substantially the form of the letter of credit currently on file with the City and, once issued, shall remain outstanding until the earlier of (a) the City's receipt and acceptance of Notice(s) of Completion in substantially the form of **Exhibit G**, attached hereto and incorporated herein by reference, which Notice(s) of Completion pertains to items 1, 2, 3, 4, 5 and 7 of the Developer Project as generally described on **Exhibit D**, attached hereto and incorporated herein by reference, or (b) a draw or draws by the City or the District totaling the full amount of the letter of credit.

Section 2.04 Developer to Acquire Property By Negotiation.

(a) Developer represents that, as of the date of this Agreement, it owns or has entered into cross-easement agreements, licenses, land purchase options or contracts for the acquisition of all property or interests therein necessary for construction of the Developer Project, except for such interests pertaining to certain property owned by 11505 Olive LLC that is the subject of the Developer Litigation. The Developer shall use reasonable efforts to acquire the necessary interests in such property owned by 11505 Olive LLC. If, upon final disposition of the Developer Litigation, the Developer is unable to acquire such property owned by 11505 Olive LLC, the Developer shall be deemed unable to complete the Developer Project as currently contemplated by the approved site plans and Construction Plans and the provisions of **Section 2.01 and 2.02** of this Agreement regarding revisions to the site plans and Construction Plans and revisions to the schedule for completion of the Developer Project shall apply.

(b) The Developer shall use reasonable efforts to convey or cause the conveyance of all property or interests therein necessary to complete Reduced Scope Phase I and Minimum Phase II at no direct acquisition cost to the District, the City, the County or the Commission. The Developer, at the District's expense, shall obtain all necessary and reasonable title commitments, inspections, tests, surveys and reports, hire and retain all experts, professionals, including attorneys or engineers, and staff, and pay all indirect costs as necessary to acquire such property or interests therein. In lieu of a direct conveyance of such property or interest therein, the Developer may convey or cause the conveyance of such property or interests therein to the City, the County or the Commission, as applicable, by placing the deeds or other instruments of conveyance into an escrow that provides for transfer of such property or interests to the City, the County or the Commission, as applicable, upon notice from the District or the City that all Governmental Approvals for Reduced Scope Phase I and Minimum Phase II have been obtained and that the Supplemental and Subordinate Obligations have been issued pursuant to **Section 5.02** of this Agreement, provided that, in the event that such notice is not received on or before June 30, 2011, such escrow shall terminate and all deeds or other instruments of conveyance shall be released to their respective grantors. Upon such return to the aforesaid grantors, the District shall be deemed unable to complete Reduced Scope Phase I and Minimum Phase II as currently contemplated and the City, the Developer and the District shall negotiate in good faith regarding how to proceed. Upon placing all such deeds or other instruments of conveyance into escrow as provided in this Section, the Developer shall have no further obligation to undertake that portion of the Developer Project related to screening the AmerenUE substation (item 6 of the Developer Project as described on **Exhibit D**, attached hereto and incorporated herein by reference).

Section 2.05 Environmental Prerequisites. Prior to the conveyance of legal title to any parcel or parcels of real property to be dedicated to the City, the Developer and the City shall exchange all information available to each party regarding the environmental condition of such parcel or parcels. Notwithstanding anything to the contrary herein, the parties agree that a Phase I Environmental report, indicating no adverse environmental conditions, shall be deemed acceptable to all parties hereto. Failure of the Developer and the City to agree within 30 days after receipt by the City of such information, or such longer period as may be agreed to by the parties, as to the environmental condition of such real property or the necessity or requirement for further investigation, assessment or remediation, shall be deemed to terminate any and all rights and obligations of the Developer to acquire such parcel or parcels of real property until such time as the parties may reach agreement as aforesaid. The Developer agrees to indemnify and hold the City, its employees, officers, agents and independent contractors and the District, its employees, officers, agents and independent contractors harmless from and against any and all suits, claims, costs and attorneys' fees resulting from, arising out of, or in any way connected with any environmental condition existing on, in or under any parcel or parcels of property acquired by the Developer for dedication to the City.

Section 2.06 Developer Payment of Certain Transportation Project Costs and TDD Administrative Costs. Prior to the issuance of the TDD Obligations, the Developer paid certain legal and administrative expenses incurred by the City in connection with the formation and administration of the District and negotiation and approval of the Prior Agreement and paid certain other TDD Administrative Costs and Transportation Project Costs, which payments totaled \$316,368.59. Such amount represents Reimbursable Transportation Project Costs that have been reimbursed exclusively from the proceeds of the TDD Obligations as provided in and subject to **Articles IV and V** of this Agreement.

Section 2.07 Construction Contracts; Insurance for Developer Project. The Developer may enter into one or more construction contracts to complete the Developer Project. Prior to execution of any construction contract, the Developer shall provide satisfactory documentation to the City evidencing limitation of any recourse of any such contractor to any mechanic's lien rights against the property acquired in connection with the Developer Project or other property owned by the Developer or a related entity of the Developer. Prior to execution of any construction contract involving construction upon property conveyed to the District, the City, the County or the Commission in accordance with **Section 2.04** of this Agreement, the Developer shall provide satisfactory documentation to the City evidencing compliance with state law with respect to performance and labor and material payment bonds, each in the amount of 100% of the contract price from an approved surety company holding a permit from the State of Missouri to act as surety (and acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States) or other surety or sureties acceptable to the City, provided that such performance and labor and material bonds shall apply only to that portion of the construction occurring upon such property that is actually acquired in the name of the District. Prior to the commencement of construction of any portion of the Developer Project, the Developer shall obtain or shall require that any such contractor obtains workers' compensation as required by State law, comprehensive general liability insurance together with an owner's contractor's policy with limits against bodily injury and property damage of not less than One Million Dollars (\$1,000,000) and builder's risk insurance coverage in an amount equal to one hundred percent (100%) of the insurable value of the Developer Project at the date of completion. The Developer shall deliver evidence of such insurance to the City. The Developer shall require that such insurance be maintained by any such contractor for the duration of the construction of such portion of the Developer Project.

Section 2.08 Construction of Sidewalks for the Developer Project. To the extent that the Construction Plans for the Developer Project submitted and approved prior to the date of execution of this Agreement do not provide for construction of sidewalks from Olive Boulevard north to the road that

would parallel Olive Boulevard between Craig Road and CityPlace Drive and along such road that would parallel Olive Boulevard between Craig Road and CityPlace Drive, the Developer shall make such changes to the Construction Plans as are necessary to provide for construction of such sidewalks and shall construct such sidewalks in accordance with the schedule set forth in **Section 2.02** of this Agreement. Notwithstanding the preceding sentence, the Developer shall have no obligation to make such changes to the Construction Plans for the Developer Project or to construct any additional sidewalks not shown on the Construction Plans submitted prior to the date of execution of this Agreement if the approved Construction Plans for Reduced Scope Phase I and Minimum Phase II provide for the construction of a sidewalk along Olive Boulevard between CityPlace Drive and Craig Road and such sidewalk is constructed by the District on or before December 31, 2013.

Section 2.09 Inspection. The City may conduct such periodic inspections of the Developer Project as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City access to the work site from time to time upon reasonable advance notice prior to the completion of the Developer Project for reasonable inspection thereof. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Developer Project as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

Section 2.10 Notice of Completion. Promptly after completion of the Developer Project, the Developer shall furnish to the City a Notice of Completion. The parties shall cooperate so that the City can carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Notice of Completion. The Notice of Completion shall be accepted by the City unless the City furnishes the Developer with specific written objections to the status of the Developer Project, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Notice of Completion by the City, the City may accept dedication of the right-of-way acquired in connection with the Developer Project. The Notice of Completion shall be in substantially the form attached as **Exhibit G**, attached hereto and incorporated by reference herein.

Section 2.11 Dedication and Maintenance of Rights-of-Way for Developer Project. Concurrent with completion of the Developer Project, the Developer shall dedicate and convey to the City any right-of-way acquired in connection with the Developer Project, provided that the City may determine, in its sole and absolute discretion, that it will not take dedication and conveyance of all or any portion of the right-of-way acquired in connection with the Developer Project. Upon such dedication and conveyance of right-of-way acquired in connection with the Developer Project (except such right-of-way acquired for the Transportation Project in accordance with **Section 2.04** of this Agreement), the Developer shall remain responsible for the maintenance of such improvements pursuant to a Maintenance Agreement, which shall be in substantially the form of **Exhibit H**, attached hereto and incorporated herein by reference, and shall be executed in conjunction with the dedication.

Section 2.12 Release of Cornerstone Opportunity Ventures, LLC. The parties hereby acknowledge and agree that, upon execution of this Agreement, Cornerstone Opportunity Ventures, LLC, an affiliate of the Developer, is released from any obligations to perform or pay for development activities under this Agreement including completion of the Developer Project. Notwithstanding the execution of this Agreement, the parties acknowledge and agree that Cornerstone Opportunity Ventures, LLC, as a transferee of real property within the District, remains subject to the covenants provided in the Memorandum of Amended and Restated Transportation Development Agreement, including without limitation the obligation to pay sales taxes and the special assessment imposed by the District and obligations related to reporting and recruiting sales tax generating tenants, which covenants can be found

in Sections 3.09, 3.10 and 5.08 of this Agreement. These are tax related and non-monetary obligations which Cornerstone Opportunity Ventures, LLC will continue to have as an owner of property within the District.

ARTICLE III. TRANSPORTATION DEVELOPMENT DISTRICT

Section 3.01 Creation of the District. The parties acknowledge and agree that the District has been created solely for the purpose of providing TDD Revenues to fund the construction of part or all of the Transportation Project by financing certain Transportation Project Costs and TDD Administrative Costs paid or incurred in connection with the Transportation Project. The parties further acknowledge that the Court has entered its order declaring the District organized and subjecting the District to the obligations set forth in the Prior Agreement, as amended by this Agreement and as this Agreement may be further amended. The District shall be required to operate in accordance with such order entered by the Court and pursuant to the contemplated Cooperation Agreement.

Section 3.02 District Boundaries. The District's boundaries shall consist of the real property described in **Exhibit A**, attached hereto and incorporated herein by reference. For the purposes of this Agreement, the real property within the boundaries of the District that is located east of Craig Road shall be considered Sub-Area 2 of the District. The Developer shall also include or cause to be included in the District's boundaries any additional real property subsequently acquired by the Developer or its affiliates that is contiguous with the real property described in **Exhibit A**. To the extent that the Developer is able to obtain the consent of other owners of record of real property contiguous with the real property described in **Exhibit A** to include their real property within the boundaries of the District, such additional property may also be included in the District's boundaries with the City's consent by prosecution of a petition to adjust the District's boundaries, provided that the City hereby consents to a boundary adjustment to include one or more of the following parcels of real property: (a) 11743 Olive Boulevard and 11745 Olive Boulevard; (b) 11950 Olive Boulevard; and (c) 12010 Olive Boulevard. In the event that the owner of record of real property located at 12010 Olive Boulevard consents to join in a petition to adjust the boundaries of the District, the City hereby consents to the addition of real property owned by the City and located at 11915 Olive Boulevard, but only to the extent that the inclusion of such real property owned by the City within the District's boundaries is necessary to make the real property located at 12010 Olive Boulevard contiguous with the real property legally described in **Exhibit A**.

Section 3.03 District's Board of Directors. The District's Board of Directors shall consist of seven members, which shall include four members who are City officials, two members who are owners or employed by owners of record of real property located within the District and one member who owns or is employed by a business that owns or has a leasehold interest in real property located within the District, which real property is not owned by the Developer or any of its affiliates. The parties acknowledge and agree that, upon the creation of the District, the Mayor nominated a slate of four City officials to serve on the District's Board of Directors, one of whom was the Mayor and at least two of whom were current members of the City Council, which nomination was approved by the City Council. For purposes of Section 238.220.2 of the TDD Act, the Developer and its affiliates provided a proxy to a representative of the Developer for purposes of electing the slate of four City officials nominated to the District's board of directors. At such election, the proxyholder elected the confirmed nominees and the two City Council members were elected to terms having equal length. At least 15 days prior to the expiration of the terms of the City officials serving on the District's Board of Directors, or in the event of a vacancy in any such position held by such a City official, the Mayor shall nominate, subject to the approval of the City Council, a slate of City officials to succeed those City officials whose terms have expired or whose seats have become vacant, provided that the District's Board of Directors shall at all times include four City officials, one of whom shall have been the Mayor at the time of nomination and at least two of whom shall have been members of the City Council at the time of their nomination to the

District's Board of Directors. At each annual and special meeting of the owners of record of real property at which City officials are to be elected to the District's Board of Directors, the Developer and its affiliates shall provide a proxy to a representative of the Developer or to a City official for purposes of electing such City officials to the District's Board of Directors and the City shall be deemed to have elected the confirmed nominees.

Section 3.04 Scope of Transportation Project. As of the date of this Agreement, the District has constructed and financed a portion of the Primary Transportation Project and shall be responsible for continuing to construct and finance that portion of the Primary Transportation Project included in Reduced Scope Phase I and Minimum Phase II. As of the date of this Agreement, the District has received the Loan and has used a portion of the proceeds of the Loan to construct and finance a portion of the Additional Transportation Project and shall be responsible for using the remainder of the proceeds of the Loan, as well as other available funds such as the proceeds of the Supplemental and Subordinate Obligations and the West Oak TDD Revenues (after repayment of the Loan and up to \$150,000 of the costs of formation of the West Oak TDD), to construct and finance a portion of the Primary Transportation Project included in Reduced Scope Phase I and Minimum Phase II. The District's funds shall not be used for the widening of any portion of Olive Boulevard except as expressly included in the Transportation Project (as generally described in **Exhibits B, C and E**, attached hereto and incorporated herein by reference), absent further approval from the City. The parties acknowledge and agree that the District shall have no obligation to finance or construct that portion of the Primary Transportation Project or the Additional Transportation Project included in Remaining Phase II, but may, subject to the provisions of **Section 3.05** of this Agreement, provide funding for Remaining Phase II to the extent that TDD Revenues attributable to the TDD Sales Tax are available upon satisfaction in full of the Series 2005 Bonds and the Supplemental and Subordinate Obligations or to the extent that TDD Revenues attributable to the TDD Special Assessment are available upon satisfaction in full of the Series 2005 Bonds and the Supplemental and Subordinate Obligations and the Developer, in its sole discretion, consents to the use of such TDD Revenues attributable to the TDD Special Assessment to provide such funding. Upon execution of this Agreement, the City shall use reasonable efforts to seek additional sources of funding for Remaining Phase II, including without limitation those sources of funds identified in Section 4 of the Term Sheet.

Section 3.05 Financing of Primary Transportation Project; Additional Transportation Project. Unless otherwise agreed upon by the City and the owners of record of all real property located within Sub-Area 1 and the owners of all businesses engaged in retail sales within Sub-Area 1 of the District, the TDD Revenues attributable to TDD Sales Tax generated within Sub-Area 1 shall be used solely to finance the Primary Transportation Project. Pursuant to Resolution No. 608, the City has consented to the use of TDD Revenues attributable to Sub-Area 2 for financing all or any portion of the Primary Transportation Project or the Additional Transportation Project or both.

Section 3.06 TDD Sales Tax. The District shall be authorized to impose the TDD Sales Tax in accordance with Section 238.235, which TDD Sales Tax shall be imposed at a rate not to exceed one-half of one percent (1/2%). The City and the Developer agree that the District shall not repeal or amend the TDD Sales Tax unless such repeal or amendment will not impair the District's ability to repay the TDD Obligations. All TDD Revenues attributable to the TDD Sales Tax shall be deposited into a special trust fund to provide for the payment of Transportation Project Costs and TDD Administrative Costs incurred in connection with the Transportation Project, including without limitation the transfer of such TDD Revenues to a Trustee to be deposited into a segregated account of a revenue fund held in the custody of the Trustee to provide for the repayment of TDD Obligations issued in connection with the Transportation Project. The Missouri Department of Revenue shall collect the TDD Sales Tax on behalf of the District and shall deduct its costs of collection up to one percent (1%) of the total amount collected in accordance with Section 238.235 of the TDD Act. In the event that the Developer obtains the consent

of the owners of record of real property located at 828 North New Ballas Road and 11950 Olive Boulevard to the inclusion of their real property in the District, the City hereby agrees that any person or entity that operates a hotel or motel within the District that is subject to the TDD Sales Tax shall receive a credit in the amount of such TDD Sales Tax collected and remitted to the District by such person or entity against the obligation of such person or entity to collect and remit any new tax or business license subsequently imposed by the City on sales or charges for rooms furnished at any hotel or motel or other similar establishment in which rooms are regularly provided to the public, which credit shall commence on the first day of the month in which any such new tax or business license becomes effective and shall continue for so long as the TDD Sales Tax is levied and collected by the District and which credit shall only apply to transportation development district sales taxes owed for the same period of operation that corresponds to the new tax or business license that is owed.

Section 3.07 TDD Special Assessment.

(a) The District shall be authorized to impose the TDD Special Assessment in an amount not to exceed forty percent (40%) of the aggregate principal amount of the Series 2005 Bonds issued in accordance with **Section 5.01** of this Agreement, which special assessment shall be payable in annual installments, subject to reduction as provided for in the Trust Indenture relating to the Series 2005 Bonds and the District's Resolution Nos. 05-001, 05-005 and 05-012. In the event that the District issues the Supplemental and Subordinate Obligations in accordance with **Section 5.02** of this Agreement or issues Supplemental and Subordinate Obligations to the Developer or its affiliates pursuant to **Section 5.03** of this Agreement, the parties acknowledge and agree that the District shall levy the annual installments of the TDD Special Assessment without any reduction, provided that the Excess TDD Special Assessment Revenues shall be pledged to repayment of the Supplemental and Subordinate Obligations. Any such Excess TDD Special Assessment Revenues received by the District prior to the date of this Agreement shall be applied to payment of Transportation Project Costs incurred in connection with Reduced Scope Phase I and Minimum Phase II, repayment of a portion of the Loan, payment of a portion of the costs of formation of the West Oak TDD not to exceed \$150,000, or payment of Issuance Costs of the Supplemental and Subordinate Obligations.

(b) The TDD Special Assessment shall be levied pro-rata against each tract, lot or parcel of property within the District with equalized assessed valuation in excess of \$4,000,000 as of December 31, 2004, provided that such TDD Special Assessment shall not apply to any such real property if a majority of the square feet of improvements upon such real property was, as of December 31, 2004, primarily engaged in (or, if then vacant, was most recently primarily engaged in) the business of sales at retail within the meaning of the Sales Tax Law, Sections 144.010 to 144.525 of the Revised Statutes of Missouri, as amended, as determined by the District (the properties subject to the TDD Special Assessment consist of three tax parcels having locator numbers 17O640299 (formerly 17O620994 and formerly 17O620233), 17O640288 (formerly 17O640222) and 17O621005 (formerly 17O620983). On or before August 15 of each year, the District shall notify the owners of record of real property within the District that are subject to the TDD Special Assessment of the amount of the annual installment of the TDD Special Assessment to be collected in that year and any reduction made to such annual installment pursuant to this Section. If, within 30 days of receipt of such notice, such owner or owners of record of real property within the District pay all or any portion of such amount, the annual installment of the TDD Special Assessment attributable to such owner or owners of record of real property within the District shall be reduced on a dollar-for-dollar basis by the amount of such payment.

(c) The TDD Revenues attributable to the TDD Special Assessment shall be deposited into a special trust fund to provide for the payment of Transportation Project Costs and TDD Administrative Costs incurred in connection with the Transportation Project, including without limitation the transfer of such TDD Revenues to a Trustee to be deposited into a segregated account of a revenue

fund held in the custody of such Trustee to provide for the repayment of TDD Obligations issued in connection with the Transportation Project. The City shall collect the TDD Special Assessment on behalf of the District and shall deduct the City's costs of collection up to one percent (1%) of the total amount collected pursuant to Section 238.233 of the TDD Act and the Cooperation Agreement.

Section 3.08 No Other Funding Mechanisms. The District shall impose no other tax, assessment, toll or charge whatsoever without the written consent of the City and approval of the qualified voters within the District in accordance with the TDD Act.

Section 3.09 Covenants Related to the TDD. The parties acknowledge and agree that, pursuant to the Prior Agreement, the Developer and its affiliates recorded a Memorandum of Amended and Restated Transportation Development Agreement at Book 16645, Page 809 in the land records of the Office of the Recorder of Deeds of St. Louis County, Missouri, which Memorandum of Amended and Restated Transportation Development Agreement contained the following covenants:

(a) The Developer and its affiliates shall join in or otherwise cooperate with adjacent property owners to petition the Court to adjust the boundaries of the District to include one or more parcels of real property identified in **Section 3.02** of this Agreement.

(b) The Developer and its affiliates shall in good faith cooperate and assist the City in all proceedings related to the creation and certification of the District and the creation and certification of the West Oak TDD.

(c) The Developer and its affiliates shall in good faith cooperate and assist in the nomination and election of those City officials identified in **Section 3.03** of this Agreement to the District's Board of Directors, a majority of which shall at all times consist of City officials.

(d) The Developer and its affiliates shall not object to the City's designation as a "local transportation authority" within the meaning of Section 238.202 of the TDD Act.

(e) The Developer and its affiliates, as the owners of record of a majority of the real property located within the District, shall in good faith cooperate and assist in obtaining approval for and levying of the TDD Sales Tax and the TDD Assessment contemplated by this Agreement by voting to approve the TDD Sales Tax and the TDD Special Assessment at an election held in accordance with Section 238.216 of the TDD Act and by signing a special assessment petition in accordance with Section 238.230 of the TDD Act.

(f) The Developer and its affiliates shall, with respect to real property owned by the Developer and its affiliates and leased to a business engaged in sales at retail within the District, use their best efforts to ensure that every such retailer (i) adds the TDD Sales Tax to the retailer's sales price and when so added such TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 238.235 of the TDD Act; and (ii) reports the amount of TDD Sales Tax collected using such forms as may be provided from time to time by the Missouri Department of Revenue.

(g) The Developer and its affiliates shall pay the TDD Special Assessment to be levied against any and all real property owned by it within the District pursuant to the TDD Act and this Agreement no later than the dates on which each annual installment of such TDD Special Assessment is due.

(h) The Developer and its affiliates waive the right to file suit to set aside the TDD Sales Tax or TDD Special Assessment or otherwise question the validity of the proceedings relating thereto.

(i) The Developer and its affiliates shall notify the District in writing of any sale, transfer or other disposition of any real property within the District that is owned by the Developer or its affiliates, which notice shall be given within ten days after the date of said sale, transfer or other disposition. Said notice shall specify the name and address of the person or entity that acquired any or all of the real property located within the District and shall identify the real property sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

(j) The Developer and its affiliates shall cooperate with the District to obtain approval of any proposal for the abolishment of the District pursuant to Section 238.275 of the TDD Act.

The Developer acknowledges and agrees that the covenants of the Developer and its affiliates (including without limitation those in this Section and in **Sections 3.10 and 5.08** of this Agreement), as identified in the Memorandum of Amended and Restated Transportation Development Agreement, remain binding on the Developer and its affiliates and shall continue to run with the land to any transferee of real property within the District notwithstanding execution of this Agreement. Pursuant to such covenants, the Developer and its affiliates shall continue to use reasonable efforts to specifically include the covenants in such Memorandum of Amended and Restated Transportation Development Agreement in all deeds and all leases by which they convey an interest in real property within the District.

Section 3.10 Tenant Selection. So long as any TDD Obligations are outstanding, the Developer and its affiliates shall, in the development and leasing of any real property owned by them within the District and abutting Olive Boulevard, use reasonable efforts to select tenants that will produce a higher volume of TDD Sales Tax, all other economic terms and conditions being equal. The Developer acknowledges that the City has not released any affiliate of the Developer from this obligation, notwithstanding the execution of this Agreement.

Section 3.11 Developer Letter of Credit for Cost-Overruns on Reduced Scope Phase I and Minimum Phase II. To the extent that the Financial Advisor has reasonably determined that the Supplemental and Subordinate Obligations can be issued in an aggregate principal amount sufficient to fund the Project Funding Amount, to repay the Loan and to pay the cost of formation of the West Oak TDD not to exceed \$150,000 and all other conditions identified in **Section 5.02** of this Agreement are satisfied, the Developer shall provide the District with an irrevocable letter of credit naming the City and the District as beneficiaries, or such other bond or security instrument as the City may accept in its sole discretion, in the amount of \$500,000. The City or the District may draw upon such letter of credit or such other bond or security instrument only to the extent necessary to complete Reduced Scope Phase I and Minimum Phase II after the District has exhausted all of the proceeds of the Supplemental and Subordinate Obligations issued in accordance with **Section 5.02** of this Agreement and only after first providing the Developer with 30 days' written notice of their intention to draw upon such letter of credit or such other bond or security instrument, during which 30-day period the Developer may provide the District with funds in an amount equal to the intended draw. Such letter of credit or such other bond or security instrument shall expire upon the earlier of (a) completion of Reduced Scope Phase I and Minimum Phase II and payment of all costs of such completion, (b) the Developer providing the District with \$500,000 in lieu of a draw or draws on the letter of credit or such other bond or security instrument, or (c) December 31, 2013. The parties acknowledge and agree that the purpose of this letter of credit is to protect against costs and expenses arising under the scope of work contemplated by the Construction Plans for Reduced Scope Phase I and Minimum Phase II as of the date the Supplemental and Subordinate

Obligations are issued pursuant to **Section 5.02** of this Agreement and shall not be used by the Commission, the City or the District for expansion of such scope of work.

ARTICLE IV. REIMBURSEMENT OF DEVELOPER'S TRANSPORTATION PROJECT COSTS

Section 4.01 District Payment of Reimbursable Transportation Project Costs. The parties acknowledge and agree that the District has reimbursed the Developer for the verified Reimbursable Transportation Project Costs incurred by the Developer pursuant to **Section 2.06** of this Agreement out of a portion of the Bond Proceeds of the Series 2005 Bonds. The parties further acknowledge and agree that the amount of such Reimbursable Transportation Project Costs did not exceed the \$440,000 allowed under the Prior Agreement and did not include any costs associated with the acquisition of right-of-way for the Transportation Project.

Section 4.02 No Further Obligation to Reimburse the Developer. Neither the City nor the District shall have any further obligation to reimburse the Developer for any Reimbursable Transportation Project Costs incurred in connection with the Transportation Project.

ARTICLE V. TRANSPORTATION PROJECT FINANCING; COLLECTION AND USE OF TDD REVENUES

Section 5.01 Issuance of Series 2005 Bonds and Supplemental and Subordinate Obligations. The parties acknowledge and agree that the District has issued the Series 2005 Bonds for the purpose of financing the Primary Transportation Project, funding capitalized interest on the Series 2005 Bonds, funding a debt service reserve fund and paying the Issuance Costs of the Series 2005 Bonds. The parties further acknowledge and agree that the remaining Bond Proceeds of the Series 2005 Bonds are sufficient to finance part, but not all, of Reduced Scope Phase I and Minimum Phase II and that the parties will use reasonable efforts to cause the District to issue Supplemental and Subordinate Obligations pursuant to this Agreement.

Section 5.02 Conditions Precedent to Issuance of Supplemental and Subordinate Obligations. No Supplemental and Subordinate Obligations shall be issued by the District to parties other than Caplaco, Dierbergs, the Developer or their affiliates until such time as:

(a) the Consulting Engineer has provided to the District and the City a written cost estimate for construction of the remainder of Reduced Scope Phase I and Minimum Phase II and a written cost estimate for the completion of construction of the remainder of the Developer Project, unless the City has already accepted the Notice of Completion of Developer Project;

(b) the District has obtained (or will obtain at the time of issuance of the Supplemental and Subordinate Obligations pursuant to this Section) all Governmental Approvals and has obtained approval for all Construction Plans for Reduced Scope Phase I and Minimum Phase II;

(c) the District has awarded (or will award at the time of issuance of the Supplemental and Subordinate Obligations pursuant to this Section) construction contracts for completion of Reduced Scope Phase I and Minimum Phase II, the execution of which contracts is subject only to issuance of the Supplemental and Subordinate Obligations in an aggregate principal amount sufficient to fund the Project Funding Amount, to repay the Loan and to pay the cost of formation of the West Oak TDD not to exceed \$150,000;

(d) the Consulting Engineer certifies that the scope of the construction contracts includes modifications to the northeast corner of Olive Boulevard and CityPlace Drive and a portion of the east side of CityPlace Drive to provide sufficient turning radius for WB-62 trucks turning right onto CityPlace Drive from west bound Olive Boulevard;

(e) the Financial Advisor has reasonably determined that the Supplemental and Subordinate Obligations can be issued in an aggregate principal amount sufficient to fund the Project Funding Amount, to repay the Loan and to pay the cost of formation of the West Oak TDD not to exceed \$150,000;

(f) the Developer has provided a letter of credit or other bond or security instrument to the City and the District in accordance with **Section 3.11** of this Agreement;

(g) the Developer has submitted and the City has accepted a Notice of Completion of items 1 and 4 of the Developer Project;

(h) all property or interests therein necessary to complete Reduced Scope Phase I and Minimum Phase II have been conveyed to the City, the County or the Commission, as applicable, or have otherwise been placed in escrow in accordance with **Section 2.04** of this Agreement;

(i) Caplaco has formed the West Oak TDD;

(j) the West Oak Cooperation Agreement has been executed by all parties thereto;

(k) the West Oak TDD has adopted a resolution authorizing the West Oak TDD Sales Tax and such West Oak TDD Sales Tax has been approved by the qualified voters of the West Oak TDD and the West Oak TDD has provided notice to the Missouri Department of Revenue of the approval of such West Oak TDD Sales Tax;

(l) the Developer, the City and the District certify that all requirements of this Agreement, the Cooperation Agreement and the Commission Agreement, as applicable, are in full force and effect and that none of them are in breach of any provisions of such agreements as of the date of issuance of the Supplemental and Subordinate Obligations;

(m) Bond Counsel has been formally engaged by the District and the City has approved such engagement;

(n) the District has, on or before June 30, 2011, entered into an agreement to sell the Supplemental and Subordinate Obligations at the recommendation of the Financial Advisor.

Section 5.03 Issuance of Supplemental and Subordinate Obligations to Caplaco, Dierbergs and the Developer. In the event that, by the effective date of the West Oak TDD Sales Tax, the District is unable to issue Supplemental and Subordinate Obligations in an aggregate principal amount sufficient to fund the Project Funding Amount, to repay the Loan and to pay the cost of formation of the West Oak TDD not to exceed \$150,000, the District shall issue Supplemental and Subordinate Obligations in an aggregate principal amount equal to the Loan and the cost of formation of the West Oak TDD not to exceed \$150,000, which Supplemental and Subordinate Obligations shall be issued to such payees as directed by Caplaco and Dierbergs. In addition, in the event that, at any time, the District is unable to issue Supplemental and Subordinate Obligations in an aggregate principal amount sufficient to fund the Project Funding Amount, to repay the Loan and to pay the cost of formation of the West Oak TDD not to exceed \$150,000, the Developer or any of its affiliates may, in their sole and absolute discretion, purchase

Supplemental and Subordinate Obligations in an aggregate principal amount sufficient to fund all or any portion of Project Funding Amount. Upon receipt of such a request from the Developer to purchase or have its affiliates purchase Supplemental and Subordinate Obligations, the District shall issue such Supplemental and Subordinate Obligations, subject to the terms and conditions of the West Oak Cooperation Agreement.

Section 5.04 Aggregate Principal Amount of TDD Obligations. In connection with the Primary Transportation Project, the District has issued the Series 2005 Bonds in an aggregate principal amount of \$5,090,000 to (i) create a Project Fund to pay Transportation Project Costs and Reimbursable Transportation Project Costs related to the Primary Transportation Project; (ii) fund a debt service reserve fund for the Series 2005 Bonds; and (iii) pay Issuance Costs of the Series 2005 Bonds. Because the District has used a portion of the proceeds of the Loan to construct and finance a portion of the Additional Transportation Project in accordance with **Section 3.04** of this Agreement and intends to use the remainder of the Bond Proceeds of the Series 2005 Bonds and the remainder of the proceeds of the Loan to construct and finance a portion of Reduced Scope Phase I and Minimum Phase II, the District shall be authorized to issue Supplemental and Subordinate Obligations (subject to **Sections 5.02 and 5.03** of this Agreement) in an aggregate principal amount sufficient to (i) fund the Project Funding Amount; (ii) repay the Loan, (iii) pay the cost of formation of the West Oak TDD not to exceed \$150,000; (iv) fund a debt service reserve fund; (v) pay a reasonable placement fee; and (vi) pay other reasonable Issuance Costs of the Supplemental and Subordinate Obligations. In addition, the District may, upon written request of the Developer to purchase TDD Obligations other than Supplemental and Subordinate Obligations, issue a series of TDD Obligations specifically junior and subordinate to the Series 2005 Bonds and the Supplemental and Subordinate Obligations in an aggregate principal amount of not to exceed \$1,000,000 for the purpose of paying for any Transportation Project Costs within Sub-Area 1 or Sub-Area 2 not paid for out of the Project Fund created by the issuance of the Series 2005 Bonds and the Supplemental and Subordinate Obligations, provided that such junior subordinate series of TDD Obligations shall be secured by the TDD Special Assessment or a voluntary contribution by the Developer or a combination of both, and not by the TDD Sales Tax or the West Oak TDD Sales Tax.

Section 5.05 Term of TDD Obligations. All TDD Obligations shall have a final maturity that is not later than (a) April 1, 2030, or (b) 25 years from the effective date of the West Oak TDD Sales Tax. The Series 2005 Bonds shall be subject to special mandatory redemption pursuant to the requirements of the Trust Indenture relating to the Series 2005 Bonds. The Supplemental and Subordinate Obligations shall be subject to special mandatory redemption pursuant to the provisions of the West Oak Cooperation Agreement and the Bond Resolution relating to the Supplemental and Subordinate Obligations. Upon satisfaction in full of the Series 2005 Bonds and the Supplemental and Subordinate Obligations, any subordinate series of TDD Obligations shall be subject to special mandatory redemption pursuant to the provisions of the Bond Resolution relating to such subordinate TDD Obligations, which shall provide that the principal amount subject to such redemption requirements shall be an amount that is equal to the net amount of TDD Revenues attributable to the TDD Special Assessment on deposit with the applicable Trustee after: *first*, payment of arbitrage rebate; *second*, payment of fees and expenses of the Trustee; *third*, transfers to the Operating Fund; *fourth*, payment of interest due on the TDD Obligations; and *fifth*, replenishment of any debt service reserve fund.

Section 5.06 Pledge of TDD Revenues. The parties agree that the District shall pledge all TDD Revenues attributable to the TDD Special Assessment and shall, subject to annual appropriation, pledge all TDD Revenues attributable to the TDD Sales Tax to repayment of the TDD Obligations in accordance with this Agreement, the Cooperation Agreement, the West Oak Cooperation Agreement and the applicable Bond Resolutions and Trust Indentures. The TDD Obligations shall be the exclusive responsibility of the District payable solely out of District funds and property as provided by the TDD Act and shall not constitute a debt or liability or general obligation of the City, the County, the State of

Missouri or any agency or political subdivision thereof. The parties agree that the District shall not be obligated to pledge any funds other than those specifically pledged to repayment of the TDD Obligations.

Section 5.07 Covenant to Request Annual Appropriation. The parties agree to cause the officer of the District at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the District for each fiscal year that the Series 2005 Bonds and Supplemental and Subordinate Obligations are outstanding a request for an appropriation of TDD Revenues attributable to the TDD Sales Tax for application to the payment of the Series 2005 Bonds and the Supplemental and Subordinate Obligations in accordance with this Agreement, the Cooperation Agreement, the West Oak Cooperation Agreement and the applicable Bond Resolutions and Trust Indentures. If, within 30 days after the end of the District's fiscal year, the District's Board of Directors fails to adopt a budget, the parties agree that the District shall be deemed to have adopted a budget that provides for application of the TDD Revenues attributable to the TDD Sales Tax collected in such fiscal year in accordance with the budget for the prior fiscal year.

Section 5.08 Cooperation in the Issuance of TDD Obligations. The Developer covenants to cooperate and take all reasonable actions necessary to assist the District and its Bond Counsel, underwriters and the Financial Advisor in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TDD Obligations, including disclosure of tenants of the Developer and its affiliates and the non-financial terms of the leases between the Developer or its affiliates and such tenants. The Developer and its affiliates will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer or its affiliates, but upon the execution of a confidentiality agreement acceptable to the Developer and its affiliates, as applicable, the Developer and its affiliates will provide such information to the District's Financial Advisor, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be and remain a covenant running with the land owned by the Developer or its affiliates within the District, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement. The Developer acknowledges that, notwithstanding the execution of this Agreement, the City has not released the Developer's affiliates from their obligations under the Memorandum of Amended and Restated Transportation Development Agreement recorded by the Developer pursuant to the Prior Agreement. The Developer shall use reasonable efforts to specifically include the covenants in this Section in all deeds and all leases by which the Developer or its affiliates conveys an interest in its real property within the District.

Section 5.09 Repeal of TDD Funding Mechanisms. As long as the TDD Obligations are outstanding, the District shall not repeal or reduce the TDD Sales Tax or the TDD Special Assessment unless such repeal or reduction will not impair the District's ability to repay the TDD Obligations. Prior to the issuance of Supplemental and Subordinate Obligations pursuant to **Section 5.02** of this Agreement or the issuance of Supplemental and Subordinate Obligations to the Developer or any of its affiliates pursuant to **Section 5.03** of this Agreement, the adjustment of an annual installment of the TDD Special Assessment in accordance with the Trust Indenture relating to the Series 2005 Bonds shall not be deemed to impair the District's ability to repay the TDD Obligations that are outstanding. Upon satisfaction in full of the TDD Obligations, the District shall immediately implement the procedures in the TDD Act for repeal of the TDD Sales Tax and TDD Special Assessment and abolishment of the District, provided, however, the District shall not implement the procedures for repeal of the TDD Sales Tax and the TDD Special Assessment and abolishment of the District if the District has approved another project pursuant to the TDD Act with the prior written consent of the City, the owners of record of all real property located within the District and the owners of all businesses engaged in retail sales within the District.

Section 5.10 Abolishment of the District. Upon the expiration or notice of repeal of the TDD Sales Tax and the TDD Special Assessment at the direction of the District's Board of Directors, any TDD Revenues remaining after the final payment of TDD Administrative Costs shall be retained in a segregated account until such time as the District is abolished and the District's Board of Directors has provided for the transfer of any remaining TDD Revenues in the manner provided by the TDD Act and in accordance with the Commission Agreement and the Cooperation Agreement.

**ARTICLE VI. CONSTRUCTION OF TRANSPORTATION PROJECT;
DISBURSEMENT OF MONEYS HELD BY TRUSTEE**

Section 6.01 Disbursement of Moneys by District to Pay Transportation Project Costs and On-Going TDD Administrative Costs. The parties agree that, upon issuance of the Series 2005 Bonds, the District has paid and shall continue to pay for certain Transportation Project Costs out of that portion of the proceeds of the Series 2005 Bonds that are deposited in the Project Fund. Upon issuance of the Supplemental and Subordinate Obligations pursuant to **Section 5.02** of this Agreement or the issuance of Supplemental and Subordinate Obligations to the Developer or any of its affiliates pursuant to **Section 5.03** of this Agreement, the District shall pay for additional Transportation Project Costs related to Reduced Scope Phase I and Minimum Phase II out of that portion of the proceeds of the Supplemental and Subordinate Obligations that are deposited into the Project Fund. In addition, upon issuance of the TDD Obligations, the District shall pay for on-going TDD Administrative Costs out of those moneys that are deposited in the Operating Fund. Moneys on deposit in the Operating Fund shall be disbursed upon receipt by the applicable Trustee of a disbursement request approved by the City and the District. Moneys on deposit in the Project Fund shall be disbursed upon receipt by the applicable Trustee of a disbursement request approved by the District's Board of Directors.

Section 6.02 Plans and Specifications for the Transportation Project. Except as otherwise provided for by the Developer in accordance with **Section 2.06** of this Agreement, the parties agree that the District shall develop or cause to be developed the plans and specifications for Reduced Scope Phase I and Minimum Phase II. To the extent that the City, the County or the Commission will become the owner and will assume maintenance of a portion of Reduced Scope Phase I and Minimum Phase II, the parties agree that, in accordance with the TDD Act, the District shall submit to the City, the County or the Commission, as applicable, the plans and specifications related to such portion of Reduced Scope Phase I and Minimum Phase II. Approval of such portion of Reduced Scope Phase I and Minimum Phase II shall then vest exclusively with the City, the County or the Commission, as applicable, subject to the City, the County or the Commission, as applicable, making any revisions in the plans and specifications related to such portion of Reduced Scope Phase I and Minimum Phase II and the District and the City, the County or the Commission, as the case may be, entering into a mutually satisfactory agreement regarding development and future maintenance of such portion of Reduced Scope Phase I and Minimum Phase II. In the event of any material change to the plans and specifications for Reduced Scope Phase I and Minimum Phase II, the District shall cooperate with the City to obtain the recommendation of the City's Planning and Zoning Commission for any improvements identified as part of the Transportation Project that constitute a substantial deviation to the City's current comprehensive plan or are otherwise subject to approval by the City after review by the City's Planning and Zoning Commission pursuant to Section 89.380 of the Revised Statutes of Missouri, as amended. The City retains the right to reject any material changes to Reduced Scope Phase I and Minimum Phase II to the same extent that it could do so regarding any similar proposal submitted independent of this Agreement.

Section 6.03 Construction Contracts for the Transportation Project. The parties agree that the District shall enter into or cause to be entered into all contracts for construction of Reduced Scope Phase I and Minimum Phase II in accordance with the TDD Act and the terms of the Commission Agreement, the Cooperation Agreement and this Agreement, as applicable. Except as otherwise

expressly provided herein, the parties agree that the District shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment and construction of Reduced Scope Phase I and Minimum Phase II, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, the Construction Plans and all applicable state and local laws, ordinances and regulations, subject to any other Governmental Approvals. Notwithstanding anything to the contrary in this Section, the District shall (a) obtain the consent of the Developer prior to the District's selection of a general contractor in connection with Reduced Scope Phase I and Minimum Phase II, which consent shall not be unreasonably withheld or delayed, (b) use best efforts and cause its contractors to use best efforts to keep open to the fullest extent possible for traffic the intersection of Olive Boulevard and CityPlace Drive while work is being performed at such intersection, including without limitation performing such work at night, and (c) use best efforts and cause its contractors to use best efforts to coordinate such work with construction work being performed by the Developer, its affiliates or any owner of real property located at 4 CityPlace Drive, 11550 Olive Boulevard, 11560 Olive Boulevard, 11561 Olive Boulevard, 11563 Olive Boulevard or 11599 Olive Boulevard.

Section 6.04 Transportation Project Scope; Modifications. In the event that the amount of proceeds of the TDD Obligations deposited in the Project Fund is insufficient to pay for all Transportation Project Costs necessary to complete Reduced Scope Phase I and Minimum Phase II, or subsequent to completion and payment of same, to complete Remaining Phase II, as the case may be, the parties agree that the District shall cooperate with the City to determine the relative priority of the various improvements identified as part of the Transportation Project. To that end, the District, in cooperation with the City, may make such reasonable changes, including without limitation modification of the construction schedule, modification of the areas in which the Transportation Project is to be performed or on which the Transportation Project is to be situated, expansion or deletion of items, revisions to the locations and configurations of improvements, revisions to the areas and scope of the Transportation Project, and any and all such other changes as site conditions or orderly development may dictate; provided, however, that: (a) the District shall obtain prior approval of the City, the County or the Commission, as applicable, of any modification of the plans and specifications relating to the portion of the Transportation Project of which the City, the County or the Commission, as applicable, will become the owner; and (b) any such modifications shall comply with applicable law and code, subject to any Governmental Approvals.

Section 6.05 Dedication of Transportation Project to City, County and Commission. Upon completion of a functional portion of the Transportation Project, the District shall dedicate or cause to be dedicated such functional portion of the Transportation Project intended for dedication to the City, the County and the Commission, as applicable (maintenance of which may be assumed by the City, the County or the Commission), in accordance with the Commission Agreement, the Cooperation Agreement and this Agreement, respectively.

ARTICLE VII. GENERAL PROVISIONS

Section 7.01 Term of Agreement. The parties acknowledge and agree that the term of this Agreement shall expire at such time as all TDD Obligations are satisfied in full, the TDD Sales Tax and TDD Special Assessment have been repealed and the District has been abolished. Neither party shall terminate this Agreement prior to the expiration of its term, provided, however, that in the event that the District does not promptly execute the Cooperation Agreement and/or the conditions for issuance of the Supplemental and Subordinate Obligations in accordance with **Section 5.02** of this Agreement are not promptly met, upon notice from either the City or the Developer to the other party, the parties shall negotiate in good faith to amend this Agreement to address prevailing circumstances in order to achieve as much as possible of the current purposes of this Agreement.

Section 7.02 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns. Without limiting the generality of the foregoing, the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after development of the Developer Project, whereupon the party disposing of its interest under this Agreement shall be thereafter released from further obligation under this Agreement, provided that until substantial completion of the Developer Project (including dedication of all rights-of-way and execution of the Maintenance Agreement) the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part and membership in the Developer shall not be transferred without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete the Developer Project and perform the Developer's obligations under this Agreement, all in accordance with this Agreement, provided, however, that the Developer may, without the prior written approval of the City, pledge a membership interest as part of any financing obtained by the Developer from a nationally recognized financial institution.

Section 7.03 Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within 30 days after receipt of notice, commence to cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within 30 days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such 30 days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional 30 days to cure or remedy such default or breach.

Section 7.04 Force Majeure. Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended as necessary, given best efforts, in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Developer Project or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the District, the Transportation Project, the Developer Project, the TDD Obligations or this Agreement or failure of the West Oak TDD to execute the West Oak Cooperation Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by the Developer, and further provided that the Developer notifies the City in writing within 30 days of the commencement of such claimed event of force majeure and, each month thereafter until the end of such event of force majeure, the Developer notifies the City in writing of (a) the fact that such event of force majeure is continuing and (b) any actions taken with respect to such event of force majeure by the Developer or any other person or entity during the period since the last written notice to the City.

Section 7.05 Notices. Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

(a) In the case of the Developer, to:

The Koman Group, L.L.C.
Six CityPlace Drive, Suite 430
Creve Coeur, Missouri 63141
Attn: William Koman, Jr.

With a copy to:

The Koman Group, L.L.C.
Six CityPlace Drive, Suite 430
Creve Coeur, Missouri 63141
Attn: Garrick Hamilton

(b) In the case of the City, to:

City of Creve Coeur
300 North New Ballas Road
Creve Coeur, Missouri 63141
Attention: Mark Perkins, City Administrator

With a copy to:

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Robert Klahr

And

Curtis, Heinz, Garrett & O'Keefe, P.C.
130 South Bemiston Avenue, Suite 200
St. Louis, Missouri 63105
Attention: Carl Lumley

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 7.06 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.

Section 7.07 Entire Agreement; Amendment. The parties agree that this Agreement, including all exhibits, 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 and effective when signed by the authorized agents of the parties.

Section 7.08 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 7.09 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, unless the court finds the valid portions of the Agreement are so essentially and inseparably connected with and dependent upon the unenforceable portion(s) that it cannot be presumed that the City Council or the Developer would have authorized the valid portions without the unenforceable portion(s), or unless the court finds that the valid portions standing alone are incomplete and incapable of being executed in accordance with the intent of this Agreement.

Section 7.10 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City or the District shall be personally liable in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

Section 7.11 Release and Indemnification. Notwithstanding anything herein to the contrary, the City and the District and their governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for damages or otherwise in the event that all or any part of the TDD Act, or any ordinance adopted in connection with either the TDD Act or this Agreement 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) judgment of any court of competent jurisdiction, and by reason thereof either the City or the District is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof. The Developer releases from and covenants and agrees that the City and the District and their governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City and the District and their governing body members, officers, agents, attorneys, employees and independent contractors against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the property in connection with the Developer Project or construction of the Developer Project, including without limitation location of hazardous wastes, hazardous materials or other environmental contaminants on the such property, including all costs of defense, including reasonable attorneys fees, except for those matters arising out of the gross negligence or willful misconduct of the City or the District or their governing body members, officers, agents, attorneys, employees and independent contractors.

Section 7.12 Reports. Until completion of the Developer Project and acceptance thereof by the appropriate authorities, the Developer shall make quarterly reports (January 15, April 15, July 15 and October 15) to the City Administrator, with copies to Caplaco and the District's Board of Directors, regarding the status of construction, expenses and outstanding obligations. Until completion of Reduced Scope Phase I and Minimum Phase II (and Remaining Phase II, if commenced), the District's Board of Directors shall make quarterly reports (January 15, April 15, July 15 and October 15) to the City Administrator, with copies to the Developer and Caplaco, regarding the status of construction and TDD Revenues, expenses and outstanding obligations. Thereafter, the District's Board of Directors shall continue to make such reports on an annual basis (January 15) until the District is abolished.

ARTICLE VIII. REPRESENTATIONS OF THE PARTIES

Section 8.01 Representations of the City. Upon contemporaneous execution of the Cooperation Agreement by the City and the District, 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 or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. This Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 8.02 Representations of the Developer. Upon contemporaneous execution of the Cooperation Agreement by the City and the District, 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 and actions. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(The remainder of this page intentionally left blank.)

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

“CITY”:

CITY OF CREVE COEUR, MISSOURI

By: Mark Perkins
Mark Perkins, City Administrator

Attest:

(SEAL)

Deborah Ryan
City Clerk

“DEVELOPER”:

THE KOMAN GROUP, L.L.C.

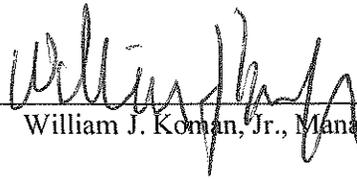
By:  _____
William J. Koman, Jr., Manager

EXHIBIT A
Description of the District

(Attached hereto.)

EXHIBIT B
Primary Transportation Project

1. Widening of Olive Boulevard at the westbound approach to CityPlace Drive, provided that such widening shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505 Olive, LLC or its successors in interest.
2. Construction of sidewalks, streetlights, streetscape, signage and tree grates from Craig Road to Fountain Plaza, provided that such construction shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505, LLC or its successors in interest.
3. Bury Ameren UE electric lines between Craig Road and Orchard Lakes Drive and related utility relocation.
4. Reconfigure the intersection of Olive Boulevard and CityPlace Drive/Old Ballas Road, related utility relocation and other related improvements as required by the Missouri Department of Transportation or the City.
5. Installation of a pedestrian crossing on Olive Boulevard at the proposed new traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road.
6. Modifications along Olive Boulevard to support the new traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road, as required by the Missouri Department of Transportation or the City.
7. Improvements at pedestrian crossings (such as installation of landscape medians) along Olive Boulevard between Craig Road and Orchard Lakes Drive, as required by the Missouri Department of Transportation or the City.
8. New traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road.
9. Create a new road extending north of Olive Boulevard to the existing drive behind Borders (which intersects North New Ballas Road) with the proposed new signal at Olive Boulevard between Old Ballas Road and New Ballas Road.
10. Extension of Orchard Bend from Rue De La Banque East to Rue De La Banque West with right-of-way donated by property owner.
11. A portion of the cost of screening the AmerenUE substation.
12. New traffic signal on New Ballas Road at Studt Avenue.
13. Installation of pedestrian crossings on New Ballas Road at Studt Avenue.
14. Installation of streetlights along New Ballas Road between Studt Avenue and Olive Boulevard.
15. Utility relocation and site work required in connection with the construction of an intersection of Craig Road and the road that would parallel Olive Boulevard between Craig Road and CityPlace Drive.

16. Other similar or related infrastructure or improvement and incidental right-of-way in connection with items 1 through 15 above.

17. Related engineering, design, legal and lending fees in connection with items 1 through 16 above.

EXHIBIT C
Additional Transportation Project

1. Construction of sidewalks, streetlights, streetscape, signage and tree grates from Craig Road to the eastern edge of West Oak Center.
2. Bury Ameren UE electric lines between Craig Road and eastern edge of West Oak Center.
3. New signalized intersection at eastern exit of West Oak Center and road serving as entrance to office park south of Olive Boulevard.
4. Modifications along Olive Boulevard to support the new traffic signal at the eastern exit of West Oak Center and the road serving as entrance to the office park south of Olive Boulevard, as required by the Missouri Department of Transportation or the City, provided that any widening of Olive Boulevard requested by either entity shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505 Olive, LLC or its successors in interest.
5. Utility relocation related to items 1 through 4 above.
6. Related engineering, design, legal and lending fees in connection with items 1 through 5 above.

EXHIBIT D
Developer Project

1. Acquisition of right-of-way for a road that would parallel Olive Boulevard between Craig Road and CityPlace Drive.
2. Acquisition of right-of-way on the north side of Olive Boulevard for the upgrading of CityPlace Drive from Olive Boulevard to the new intersection with the road that would parallel Olive Boulevard between Craig Road and CityPlace Drive.
3. Acquisition of right-of-way between Borders and Denny's for the new road extending north of Olive Boulevard to the existing drive behind Borders (which intersects North New Ballas Road) with the proposed new signal at Olive Boulevard between Old Ballas Road and New Ballas Road.
4. Construction of a road that would parallel Olive Boulevard between Craig Road and CityPlace Drive, including traffic signal interconnection at Craig Road.
5. Upgrading CityPlace Drive from Olive Boulevard to the new intersection with the road that would parallel Olive Boulevard between Craig Road and CityPlace Drive.
6. A portion of the cost of screening the Ameren UE substation with construction of a fifteen-foot wall with limestone cap and wrought iron gates around the Ameren UE substation, provided that the Developer may be relieved of its obligation to construct such screening in accordance with **Section 2.04** of this Agreement.
7. Construction of a break in the median on Craig Road south of Olive Boulevard to allow full access to the real property located at 11464 Olive Boulevard from Craig Road.
8. Construction of sidewalks from Olive Boulevard north to the road that would parallel Olive Boulevard between Craig Road and CityPlace Drive and along such road that would parallel Olive Boulevard between Craig Road and CityPlace Drive, provided that the Developer may be relieved of its obligation to construct such sidewalks in accordance with **Section 2.08** of this Agreement.

EXHIBIT E
Reduced Scope Phase I and Minimum Phase II

Reduced Scope Phase I

1. Widening of Olive Boulevard at the westbound approach to CityPlace Drive, provided that such widening shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505 Olive, LLC or its successors in interest.
2. Construction of sidewalks from Craig Road to CityPlace Drive, provided that such construction shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505, LLC or its successors in interest.
3. Bury Ameren UE electric lines between Craig Road and CityPlace Drive and related utility relocation.
4. Reconfigure the intersection of Olive Boulevard and CityPlace Drive/Old Ballas Road, related utility relocation and other related improvements as required by the Missouri Department of Transportation or the City (except for right turn lane on eastbound Olive Boulevard approaching Old Ballas Road).
5. Improvements at pedestrian crossings (such as installation of medians) along Olive Boulevard between Craig Road and Old Ballas Road, as required by the Missouri Department of Transportation or the City.
6. Create a new road extending north of Olive Boulevard from its intersection with Hamm Avenue to the existing drive behind Borders (which intersects North New Ballas Road).
7. New traffic signal on New Ballas Road at Studt Avenue.
8. Installation of pedestrian crossings on New Ballas Road at Studt Avenue.
9. Installation of streetlights and sidewalks along New Ballas Road between Studt Avenue and Olive Boulevard.
10. Utility relocation and site work required in connection with the construction of an intersection of Craig Road and the road that would parallel Olive Boulevard between Craig Road and CityPlace Drive.
11. New signalized intersection at eastern exit of West Oak Center and road serving as entrance to office park south of Olive Boulevard.
12. Modifications along Olive Boulevard to support the new traffic signal at the eastern exit of West Oak Center and the road serving as entrance to the office park south of Olive Boulevard, as required by the Missouri Department of Transportation or the City, provided that any widening of Olive Boulevard requested by either entity shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505 Olive, LLC or its successors in interest.
13. Other similar or related infrastructure or improvement and incidental right-of-way in connection

with items 1 through 12 above.

14. Related engineering, design, legal and lending fees in connection with items 1 through 13 above.

Note: As of the date of this Agreement, all items have been completed except for items 1, 2, 4, 5, that portion of item 9 related to streetlights, item 10 and those portions of items 13 and 14 related to the foregoing items.

Minimum Phase II

1. Complete Reconfiguration of the intersection of Olive Boulevard and CityPlace Drive/Old Ballas Road, related utility relocation and other related improvements as required by the Missouri Department of Transportation or the City (right turn lane on eastbound Olive Boulevard approaching Old Ballas Road).
2. Modifications along Olive Boulevard in lieu of new traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road, as required by the Missouri Department of Transportation (installation of medians along Olive Boulevard between Old Ballas Road and New Ballas Road).
3. Other similar or related infrastructure or improvement and incidental right-of-way in connection with items 1 through 2 above.
4. Related engineering, design, legal and lending fees in connection with items 1 through 3 above.

EXHIBIT F
Remaining Phase II

1. Construction of sidewalks (to the extent not completed in Reduced Scope Phase I), streetlights, streetscape, signage and tree grates from Craig Road to Fountain Plaza, provided that such construction shall not involve a taking of any parking fronting on Olive Boulevard or the elimination of any curb cut on Olive Boulevard on any properties west of Craig Road owned by 11505, LLC or its successors in interest.
2. Bury Ameren UE electric lines between CityPlace Drive and Orchard Lakes Drive and related utility relocation.
3. Installation of a pedestrian crossing on Olive Boulevard at the proposed new traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road.
4. Modifications along Olive Boulevard to support the new traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road, as required by the Missouri Department of Transportation or the City (includes widening of Olive Boulevard to add an eastbound lane between New Ballas Road and Old Ballas Road).
5. Improvements at pedestrian crossings (such as installation of landscape medians) along Olive Boulevard between Old Ballas Road and Orchard Lakes Drive, as required by the Missouri Department of Transportation or the City.
6. New traffic signal on Olive Boulevard between Old Ballas Road and New Ballas Road.
7. Extension of Orchard Bend from Rue De La Banque East to Rue De La Banque West with right-of-way donated by property owner.
8. A portion of the cost of screening the AmerenUE substation.
9. Construction of sidewalks (to the extent not completed in Reduced Scope Phase I), streetlights, streetscape, signage and tree grates from Craig Road to the eastern edge of West Oak Center.
10. Bury Ameren UE electric lines between Craig Road and eastern edge of West Oak Center.
11. Other similar or related infrastructure or improvement and incidental right-of-way in connection with items 1 through 10 above.
12. Related engineering, design, legal and lending fees in connection with items 1 through 11 above.

EXHIBIT G
Notice of Completion of Developer Project

NOTICE OF COMPLETION OF DEVELOPER PROJECT

The undersigned, THE KOMAN GROUP, L.L.C., a Missouri limited liability company (the "Developer"), pursuant to that certain Second Amended and Restated Transportation Development Agreement dated as of October 1, 2010 (the "Agreement"), between the City of Creve Coeur, Missouri (the "City"), and the Developer, hereby certifies to the City as follows:

1. As of _____, _____, the acquisition and construction of the following item(s) of the Developer Project (as that term is defined in the Agreement) [has/have] been completed in accordance with the Agreement: [list item(s)].

2. All rights-of-way related to the applicable items of the Developer Project have been acquired in accordance with the Agreement and the Developer and the City have entered into a Maintenance Agreement whereby the Developer shall maintain the improvements on such rights-of-way in accordance with the Agreement.

3. The work on the applicable items of the Developer Project has been performed in a workmanlike manner and in accordance with the Construction Plans.

4. Lien waivers for applicable portions of the work have been obtained.

5. This Notice of Completion of Developer Project 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 construction of the applicable items of the Developer Project.

6. The City's acceptance of this Notice of Completion of Developer Project shall evidence the satisfaction of the Developer's agreements and covenants to construct the applicable items of the Developer Project.

This Notice 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 _____, _____.

THE KOMAN GROUP, L.L.C.

By: _____
William J. Koman, Jr., Manager

ACCEPTED:

CITY

By: _____

Name: _____

Title: _____

EXHIBIT H
Form of Maintenance Agreement

(Attached hereto.)

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Public Access Road Easement Agreement

DATE OF DOCUMENT: _____, 2010

Grantor: CORNERSTONE OPPORTUNITY VENTURES, LLC

CP NORTH I, LLC

CP NORTH II, LLC

SWANSEA ACQUISITIONS, L.L.C.

Mailing Address: c/o The Koman Group, L.L.C.
Six CityPlace Drive, Suite 430
Creve Coeur, Missouri 63141

Grantee: CITY OF CREVE COEUR, MISSOURI

Mailing Address: 300 N. New Ballas Road
Creve Coeur, Missouri 63141

LEGAL DESCRIPTION: See Attached Exhibit A

REFERENCE BOOK & PAGE: Book 18673, Page 3162

This document prepared by
and when recorded return to:

Garrick R. Hamilton, Esq.
The Koman Group, L.L.C.
Six CityPlace Drive, Suite 430
Creve Coeur, Missouri 63141

PUBLIC ACCESS ROAD EASEMENT AGREEMENT

THIS PUBLIC ACCESS ROAD EASEMENT AGREEMENT ("Agreement") is made as of _____, 2010 ("Effective Date") by and among CORNERSTONE OPPORTUNITY VENTURES, LLC, a Delaware limited liability company, CP NORTH I, LLC, a Missouri limited liability company, CP NORTH II, LLC, a Missouri limited liability company, CP NORTH II, LLC, a Missouri limited liability company, and SWANSEA ACQUISITIONS, L.L.C., an Illinois limited liability company (collectively, the foregoing entities are referred to herein as "Grantors"), and CITY OF CREVE COEUR, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri (the "City").

RECITALS

A. Grantors are the owners of various tracts of land located in the City of Creve Coeur, State of Missouri (the "City") as more particularly described on Exhibit A (the "Land").

B. Grantors, pursuant to that certain Amended and Restated Transportation Development Agreement dated as of March 1, 2005 (as amended from time to time, the "Development Agreement"), are obligated to convey and deliver unto the City a right of access over certain roadways constructed upon the Land and shown on Exhibit B (the "Access Road") for the benefit of the public and to make certain commitments pertaining to the maintenance of said Access Road.

C. In fulfillment of their obligation pertaining to the Access Road set forth in the Development Agreement, Grantors do hereby desire to grant unto the City and the City does hereby desire to accept from Grantors an easement for the purpose of providing public access to and use of the Access Road upon and subject to the conditions and limitations herein contained.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Easement Grant.** Grantors hereby grant to the City and the City hereby accepts from Grantors, for the general use of the public, a non-exclusive easement for vehicular ingress and egress (the "Easement") upon and across those portions of the Land identified as the "Access Road" on Exhibit B, attached hereto and incorporated herein by reference, to have and to hold for the purposes and upon the terms and conditions set forth herein. The Easement is restricted to vehicular use and incidental pedestrian use only for traffic going to and from the Land and no rights are hereby granted to use any part of the Access Road or the Land for parking or otherwise. Except in the event of an emergency and, then, only for the reasonable length of said emergency which shall not exceed, in any event, ten (10) days in any thirty (30) day period, the City shall not cause the diversion of "through traffic" from adjacent roadways, drives, streets or properties over or across the Access Road.

2. **Reservation of Rights.** Nothing contained in this Agreement shall in any way restrict Grantors' ability to use the surface, air rights or underground portions of the Access Road located or the Land in any manner whatsoever so long as such use does not unreasonably interfere with the non-exclusive easement rights granted in this Agreement. Furthermore, Grantors reserve for themselves and their successors and assigns, the following rights:

(a) Subject to existing easements and restrictions recorded against the Land and all governmental regulations, each Grantor may reserve all or any portion of the parking fields

located adjacent to the Access Road for private use by the owner(s), lessees, and/or sublessees of the Land and their respective licensees (collectively, the "Private Users"), and Grantors shall be entitled to retain all revenues generated by such parking fields, if any.

(b) Each Grantor shall have the right to close off that portion of the Access Road upon its portion of the Land for emergency purposes, as reasonably determined by the applicable owner, and otherwise for private use from time to time, provided, however, such Grantor's private use of the Access Road may not occur on more than eighteen (18) days in any calendar year and no more than three (3) Days in any calendar month (separately applied to each Grantor).

(c) Grantors shall have the right to cause the peaceable removal from the Land and/or Access Road of any person (1) causing a disturbance of the activities on the Land or Access Road, (2) causing a nuisance, (3) loitering, or (4) otherwise not using the Access Road for vehicular or pedestrian access, ingress and egress in a safe and legal manner.

3. Duration. The Easement, covenants, conditions and restrictions contained herein shall create mutual benefits and covenants running with the Access Road, and shall be binding upon any owner, tenant or occupant of the Access Road and each of Grantors' respective successors and assigns. The Easement may be terminated at any time by the execution and recording of a termination agreement signed by each owner of the Access Road and the City Administrator and shall be deemed amended by any modification of the Access Road location approved by the City pursuant to that certain Amended and Restated Reciprocal Easement and Restriction Agreement, dated as of November 19, 2009, and recorded November 20, 2009 at Book 18673, Page 3162 of the real property records for St. Louis County, Missouri (as the same may be amended from time to time in accordance therewith, the "CityPlace REA").

4. Operating Income. The City shall not impose any fee, toll or other charge for the public's use of the Access Road. Grantors shall be entitled to keep any fees or other income or rents paid for a third party's use of the Land or Access Road throughout the term of this Agreement.

5. Maintenance of Easement Area. Grantors shall maintain or cause to be maintained the Access Road in accordance with Section 10.1(b) of the CityPlace REA. The City shall be entitled to enforce the obligations for maintenance and repair of the Access Road set forth in the CityPlace REA as though it were named as an Owner and the costs of such maintenance and repair shall be treated by Grantors as Common Expense thereunder. Maintenance and repair of the Access Road which may constitute a Proposed Capital Expenditure (as defined in the CityPlace REA) shall be subject to the approval requirements set forth in Sections 11.3, 12 and 13 of the CityPlace REA.

6. Modification; Sole Agreement; Waiver. Except as provided in Section 3 above, this Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by all owners of the Land and the City. This Agreement and the CityPlace REA constitute the entire agreement between the parties with respect to the subject matter set forth herein and supersedes all prior negotiations, discussions, writing and agreements between them in connection therewith. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive

Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

12. Miscellaneous. Whenever a transfer occurs in the ownership of the Access Road, the transferor shall have no further liability for breach of covenant occurring thereafter.

13. Successors and Assigns. This Agreement shall be deemed to run with the land and shall be for the benefit of and an obligation of the owners of the Land. The Easement (a) is an easement-in-gross in favor of the City; (b) is personal to the City; and (c) may not be assigned by the City except with the prior written consent of all owners of the Access Road.

14. Priority of CityPlace REA. The parties hereto acknowledge senior nature of the CityPlace REA. This Agreement and all rights granted hereunder are expressly subject to and subordinate to the CityPlace REA in all respects. In case of any inconsistency between the terms of this Agreement and the CityPlace REA, the CityPlace REA shall control.

15. Estoppel. If requested by either the City or either Grantor, the other parties will within ten (10) days provide a written statement for the benefit of the requesting party and its assignee or lender stating that the Easement is in full force and effect without modification or default, if the same be true, and such other reasonable provisions as may be requested.

16. Authorization. The parties hereto represent and warranty that they have the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement constitutes a legal binding, valid and enforceable obligation of the parties, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement.

[Signature Pages Follow.]

GRANTEE:

CITY OF CREVE COEUR, MISSOURI, a political subdivision of the State of Missouri

By: _____

Name: _____

Title: _____

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

On this ____ day of June, 2010, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he/she is the City Administrator of the City of Creve Coeur, Missouri, a political subdivision of the State of Missouri, and that said instrument was signed in behalf of said political subdivision, by authority of its city council; and acknowledged said instrument to be the free act and deed of said political subdivision.

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

Notary Public

My Commission Expires:

EXHIBIT A TO MAINTENANCE AGREEMENT
Legal Description of Land

Lots 1, 2, 4, 5, 6 and 17 of CityPlace Subdivision of the CityPlace Subdivision as shown on the plat thereof recorded January 16, 2007 at Plat Book 355, Pages 43-46 of the Real Property Records for St. Louis County, Missouri, as amended by CityPlace Plat Two – A Resubdivision of Lots 2, 7 and 8 of CityPlace Subdivision, Part of Lot A of Craigmor Subdivision, and part of Section 3, Township 45 North, Range 5 East, City of Creve Coeur, St. Louis County, Missouri, according to the plat thereof recorded in Plat Book _____, Page _____ of the St. Louis County records.

Also including,

Units 1 & 2 of CityPlace Condominium created pursuant to that certain Declaration of Condominium dated April 14, 1988 and recorded at Book 8297, Page 734 of the Real Property Records for St. Louis County, Missouri.

**EXHIBIT B
ACCESS ROAD**

[attached]

(To be inserted upon execution.)