

**SUBSTITUTE BILL NUMBER 5243**

**ORDINANCE NUMBER: \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY OF CREVE COEUR, MISSOURI TO EXECUTE AN AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY AND THE OLIVE BOULEVARD TRANSPORTATION DEVELOPMENT DISTRICT; AND 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, 3042 and \_\_\_\_\_ [Substitute Bill No. 5242] authorizing the City to execute a Second Amended and Restated Transportation Development Agreement (the "*Development Agreement*") between the City and The Koman Group, L.L.C. (the "*Developer*"), regarding certain transportation-related improvements within the City and financing such improvements 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**, on May 3, 2004, the City, the Developer and the owners of record of certain real property located within the City filed a Petition for the Creation of a Transportation Development District with the Circuit Court of St. Louis County, Missouri (the "*Court*"), which was subsequently amended by the First Amended Petition for the Creation of a Transportation Development District filed with the Court on July 9, 2004; and

**WHEREAS**, on September 9, 2004, the Court entered a Judgment and Order Organizing a Transportation Development District (the "*Order*") which established the Olive Boulevard Transportation Development District (the "*District*") as a political subdivision pursuant to and in accordance with TDD Act for the sole purpose of funding the Transportation Project, as described in the Order, through the imposition of a transportation development district sales tax (the "*TDD Sales Tax*") and a special assessment (the "*TDD Special Assessment*"); and

**WHEREAS**, on April 29, 2005, the Court entered a Judgment and Order Adjusting the Boundaries of the Olive Boulevard Transportation Development District, which added approximately 12.75 acres of adjacent real property to the boundaries of the District; and

**WHEREAS**, on December 16, 2009, the Court entered a Judgment and Order for the Second Adjustment of the Boundaries of the Olive Boulevard Transportation Development District, which added approximately 1.96 acres of adjacent real property to the boundaries of the District; and

**WHEREAS**, on September 17, 2004, pursuant to Section 238.235 of the TDD Act, the District adopted Resolution No. 04-003 imposing the TDD Sales Tax at a rate of one-half of one percent (1/2%), which TDD Sales Tax became effective on June 1, 2005, following its approval by the qualified voters of the District at an election held in accordance with Section 238.216 of the TDD Act; and

**WHEREAS**, on March 1, 2005, pursuant to Section 238.230 of the TDD Act, the District adopted Resolution No. 05-001 levying special assessments in an aggregate amount equal to forty percent (40%) of the aggregate principal amount of the bonds or other obligations issued by the District to finance the Transportation Project, but not to exceed \$2,716,000, payable in annual installments over the term of such bonds or other obligations and any refunding bonds or other obligations related thereto, plus interest

at an interest rate that is equivalent to the interest rate on the bonds or other obligations plus the cost of collection of the annual installments on the assessed lots, subject to reduction as provided in such Resolution No. 05-001, which TDD Special Assessment became effective upon its approval by the qualified voters of the District at an election held in accordance with Section 238.216 of the TDD Act; 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 Development Agreement); 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 (as defined in the Development Agreement), 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**, 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**, pursuant to Section 238.250 of the TDD Act, the District and the City, in its capacity as a local transportation authority, are authorized to enter into a contract regarding the funding, promotion, planning, design, construction, improvement, maintenance, or operation of the Transportation Project; and

**WHEREAS**, the City and the District have entered into an Intergovernmental Cooperation Agreement dated as of March 1, 2005 (the "*Prior Agreement*"), pursuant to which the City has agreed to review the Construction Plans (as defined therein) for the City Transportation Project and to provide for the collection of the TDD Sales Tax and TDD Special Assessment in exchange for the District's agreement to issue its TDD Obligations (as defined therein) to finance the Transportation Project and to appropriate TDD Revenues related to the TDD Sales Tax and pledge TDD Revenues related to the TDD Special Assessment to repayment of the TDD Obligations; and

**WHEREAS**, the City and the District desire to amend and restate the Prior Agreement for the following purposes: (a) 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, (b) to relieve the City of any further obligation to collect the TDD Sales Tax, (c) to designate the City as the project manager for Reduced Scope Phase I and Minimum Phase II, (d) to

provide for the District's issuance of its Supplemental and Subordinate Obligations (as defined in the Development 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 (as defined in the Development Agreement), to fund the costs of formation of the West Oak TDD and to pay Issuance Costs (as defined in the Development Agreement) of the Supplemental and Subordinate Obligations, and (e) to require the City to use reasonable efforts to secure funding for Remaining Phase II (as defined in the Development 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 an Amended and Restated Intergovernmental Cooperation Agreement in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference (an "*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 the Amended and Restated Agreement with the District in order to: (a) 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, (b) relieve the City of any further obligation to collect the TDD Sales Tax, (c) designate the City as the project manager for Reduced Scope Phase I and Minimum Phase II, (d) provide for the District's issuance of its Supplemental and Subordinate Obligations 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 (as defined therein), to fund the costs of formation of the West Oak TDD and to pay Issuance Costs (as defined therein) of the Supplemental and Subordinate Obligations, and (e) require the City to use reasonable efforts to secure funding for Remaining Phase II 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 Amended and Restated Agreement between the City and the District, and the City Clerk is hereby authorized and directed to attest to the Amended and Restated Agreement and to affix the seal of the City thereto. The 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 resolution 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.

Adopted by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
A.J. Wang,  
City Council President

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Harold Dielmann, Mayor

Attest:

\_\_\_\_\_  
Deborah Ryan, CMC  
City Clerk

**EXHIBIT A**

**Form of Amended and Restated Agreement**

(Attached hereto.)