

AN ORDINANCE APPROVING THE COOPERATIVE AGREEMENT BETWEEN THE BRANSON LANDING TRANSPORTATION DEVELOPMENT DISTRICT AND THE CITY OF BRANSON, MISSOURI.

WHEREAS, the Board of Aldermen of Branson, Missouri (the "Board of Aldermen"), did on January 27, 2003, pass Ordinance No. 2003-016 (the "Plan Ordinance") which approved the Branson Landing Tax Financing Increment Plan dated December 1, 2002 (as amended December 9, 2002 and January 7, 2003) (the "Redevelopment Plan") providing for the acquisition, development and construction of multiple redevelopment projects in the City of Branson, Taney County, Missouri in an area described in the Redevelopment Plan (the "Redevelopment Area"); and

WHEREAS, on October 1, 2003, the City and the Developer executed the First Amended and Restated Redevelopment Contract ("Redevelopment Contract") which sets forth the right, duties and obligations of the City and the Developer to implement the Redevelopment Plan, including the formation of a transportation development district to provide a source of funding for certain Redevelopment Project Costs, as defined in the Redevelopment Contract; and

WHEREAS, the Redevelopment Contract calls for the formation of a transportation development district to provide an additional source of funding to pay for redevelopment project costs that related to transportation improvements for the Redevelopment Plan; and

WHEREAS, on January 24, 2005, the City filed a petition with the Circuit Court of Taney County for approval of the Branson Landing Transportation Development District ("District"), which will impose a one-cent sales tax to provide a source of funds for certain Reimbursable Project Costs that are also eligible as projects pursuant to the Transportation Development District Act, Sections 238.200 through 238.275, RSMo ("TDD Act"), as further specified in the Redevelopment Contract; and

WHEREAS, the District is authorized in accordance with the provisions of the TDD Act to perform all functions incident to the administration, collection, enforcement, and operation of the District Sales Tax; and

WHEREAS, the District is authorized in accordance with the provisions of the TDD Act to contract with the City as a political subdivision and a local transportation authority to assist in financing the District Projects; and

WHEREAS, the City desires to contract with the District for the City to perform the functions of administering, collecting and enforcing the District Sales Tax.

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

Section 1. The Cooperative Agreement between the City and the District ("Agreement"), attached to this ordinance, is approved and the Mayor is authorized to execute the Agreement in substantial compliance with the attached Agreement.

Section 2. This Ordinance shall be in full force and effect from and after the date of its passage by the Board of Aldermen and approval by the Mayor.

Read the first time on the _____ day of _____, 2005.


Read this second time, passed and truly agreed to and passed this _____ day of _____, 2005.

Louis E. Schaefer
Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K. Westfall
City Clerk



Daniel R. Wichmer
City Attorney

COOPERATIVE AGREEMENT

between the

CITY OF BRANSON, MISSOURI

and the

BRANSON LANDING TRANSPORTATION DEVELOPMENT DISTRICT

dated as of

_____, 2005

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement"), entered into as of this _____ day of _____, 2005, by and between the **CITY OF BRANSON, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri (the "**City**"), and the **BRANSON LANDING TRANSPORTATION DEVELOPMENT DISTRICT**, a Missouri transportation development district ("**District**" or "**TDD**") (the City and the District being sometimes collectively referred to herein as the "**Parties**", and individually as a "**Party**", as the context so requires).

WITNESSETH:

WHEREAS, the Board of Aldermen of Branson, Missouri (the "**Board of Aldermen**"), did on January 27, 2003, pass Ordinance No. 2003-016, which approved the Branson Landing Tax Financing Increment Plan dated December 1, 2002 (as amended December 9, 2002, January 7, 2003) ("**Redevelopment Plan**") providing for the acquisition, development and construction of multiple Redevelopment Projects in the City of Branson, Taney County, Missouri in the Redevelopment Area described in the Redevelopment Plan, and approved HCW Development Company, LLC, as the developer for the Redevelopment Plan ("**Developer**"); and

WHEREAS, on October 1, 2003, the City and the Developer executed the First Amended and Restated Redevelopment Contract ("**Redevelopment Contract**") which sets forth the right, duties and obligations of the City and the Developer to implement the Redevelopment Plan, including the formation of a transportation development district to provide a source of funding for certain Redevelopment Project Costs, as defined in the Redevelopment Contract; and

WHEREAS, the Redevelopment Contract calls for the creation of a transportation development district to provide funding for certain transportation-related improvements that will be constructed pursuant to the Redevelopment Plan; and

WHEREAS, on January 24, 2005, the City filed a petition with the Circuit Court of Taney County ("**Petition**") for approval of the Branson Landing Transportation Development District ("**TDD**"), which will impose a one-cent sales tax to provide a source of funds for certain Reimbursable Project Costs that are also eligible as projects pursuant to the Transportation Development District Act, Sections 238.200 through 238.275, RSMo ("**TDD Act**"), as further specified in the Redevelopment Contract; and

WHEREAS, on March 17, 2005, following a hearing, the Circuit Court of Taney County issued its order declaring that the District is formed pursuant to the TDD Act, certifying the District Sales Tax for qualified voter approval, setting the date for a meeting of the property owner to elect the Board of Directors, and setting a date of the first meeting of the District Board of Directors; and

WHEREAS, pursuant to the Court Order, the District shall impose a District Sales Tax on the receipts from the sale at retail of all tangible personal property or taxable services at retail within its boundaries pursuant to the TDD Act in the amount of one percent (1%), as set forth in the Order, if approved by the qualified voters of the District; and

WHEREAS, following the imposition of the District Sales Tax, the City will collect the District Sales Tax on behalf of the District in accordance with this Agreement, and the District Sales Tax Revenue will be used to fund and assist in the funding of the District Projects to be constructed by the City pursuant to the Redevelopment Plan; and

WHEREAS, the District is authorized in accordance with the provisions of the TDD Act to perform all functions incident to the administration, collection, enforcement, and operation of the District Sales Tax; and

WHEREAS, the District is authorized in accordance with the provisions of the TDD Act to contract with the City as a political subdivision and a local transportation authority to assist in financing the District Projects; and

WHEREAS, the District desires to contract with the City for the City to perform the functions of administering, collecting and enforcing the District Sales Tax.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the City and Developer agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS AND EXHIBITS

Section 1.1 Recitals and Exhibits.

The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

Section 1.2. Definitions.

Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“Administrative Fee” means that amount of the District Sales Tax Revenue that the City shall receive as compensation for performing the duties of collecting the District Sales Tax, pursuant to Section 3.3 of this Agreement.

“Board of Aldermen” means the governing body of Branson, Missouri.

“Bond Documents” means the bonds, the indentures and the other financing agreements, disbursement agreements and all other agreements and certificates executed in connection with the issuance of Obligations pursuant to the Redevelopment Plan and the Redevelopment Contract.

“Debt Service” means an amount required for the payment of interest on, principal of and premium, if any, on Obligations as they come due, for the payment of mandatory or optional redemption payments and for payments to reserve funds required by the terms of the Obligations to retire or secure the Obligations.

“District Projects” or **“Projects”** means those projects listed in the Petition and approved by the Order, which are set forth as follows:

- (1) widening and improvements to Business Highway 65 from its intersection with Highway 248/Highway 65 on the north to its intersection with Scaggs Road on the south;
- (2) intersection improvements, including a roundabout, at the intersection of Business Highway 65 and Skaggs Road;
- (3) a bridge over Roark Creek that shall be located generally to the east the existing Business Highway 65;

- (4) the reconstruction, realignment and extension of Boxcar Willie Drive through the Property, which will replace the existing Boxcar Willie Drive;
- (5) improvements and widening to Sycamore Street from Atlantic Street on the north to Long Street on the south;
- (6) a new parking structure at the intersection of College Street and Sycamore Street and improvements to an existing parking structure at the northwest corner of Pacific Street and Sycamore Street;
- (7) two improved parking lots on the Branson Landing property, with the first generally located east of realigned Box Car Willie Drive and north of West Oklahoma Street and the second generally located east of realigned Box Car Willie Drive and adjacent to East Price Street and East Long Street;
- (8) the Town Center and Public Domain dock, wharf, lake port and river port improvements on the Property adjacent to Lake Taneycomo, which consist of public pedestrian paths, paving and sidewalks, signage and related improvements; and
- (9) the Boardwalk dock, wharf, lake port and river port improvements on the Property adjacent to Lake Taneycomo, which consist of pedestrian paths, paving, sidewalks, wood boardwalks, piers, boardwalk shelters, improvements for marinas, boat docks and boat dock connections, signage and related dock, wharf, lake port and river port improvements.

“District Sales Tax” means the sales tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within its boundaries pursuant to the TDD Act in the amount of one percent (1%), as set forth in the Order.

“District Sales Tax Revenues” means the monies actually collected, pursuant to this Agreement and the TDD Act, from the imposition of the District Sales Tax.

“Economic Activity Taxes” means the Economic Activity Taxes, as defined by the TIF Act and captured by the Redevelopment Plan.

“Effective Date” means the date that this Agreement is fully executed by the parties.

“Event of Default” means any event specified in Section 6.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the District or the City not caused by the District’s or City’s failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner. Excusable Delays shall extend the time of performance for the period of such excusable delay.

“Obligations” means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by or at the direction of the City or any other public entity which pay for the District Projects, in whole or in part, in accordance with the Redevelopment Plan and the Redevelopment Contact, or to refund outstanding Obligations.

“Operating Costs” means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications,

meetings, supplies, equipment, photocopying, the engagement of special legal counsel, financial auditing services, and other consultants or services. Time expended by City employees, and materials and supplies used by the City, in the performance of the administrative services set forth in Section 3.2, for which the City receives the Administrative Fee, shall not be included as Operating Costs. Costs incurred by the District or City to add property to the District, as allowed by the TDD Act, shall be treated as Operating Costs.

“Order” means the Final Order and Judgment Certifying Creation of the Branson Landing Transportation Development District, issued by the Circuit Court of Taney County on March 17, 2005.

“Ordinance” means an ordinance enacted by the Board of Aldermen.

“Payments in Lieu of Taxes” means the incremental taxes paid on account of real estate tax assessments as provided and defined in the TIF Act and the Redevelopment Plan.

“Projects” -- see the definition of “District Projects.”

“Project Costs” means all actual and reasonable costs and expenses which are incurred by or at the direction of the City with respect to construction of the District Projects, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded in connection with the District Projects that are constructed or undertaken by the City, plus all actual and reasonable costs to plan, finance, develop, design and acquire the District Projects, including but not limited to the following:

- (1) actual and reasonable costs of issuance and capitalized interest, if any, for any Obligations issued to finance the District Projects;
- (2) actual and reasonable fees and expenses of architects, appraisers, attorneys, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, financing, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, attorneys, surveyors and engineers in relation to the construction of the District Projects and all actual and reasonable costs for the oversight of the completion of the District Projects including overhead expenses of the City for administration, supervision and inspection incurred in connection with the District Projects; and
- (3) all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the District Projects and which may lawfully be paid or incurred by the District under the TDD Act.

“Redevelopment Area” shall have the meaning assigned in the Redevelopment Plan and Redevelopment Contract pursuant to the TIF Act.

“Special Allocation Fund” means the fund into which, as required by the TIF Act, all Payments in Lieu of Taxes and Economic Activity Taxes are deposited for the purpose of paying Reimbursable Project Costs.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, *et. seq.*, of the Revised Statutes of Missouri, as amended.

"Trustee" means the banking entity named by or at the direction of the City as bond trustee in connection with the issuance of any Obligations.

ARTICLE 2: REPRESENTATIONS

Section 2.1. Representations by the District.

The District represents that:

A. The District is a transportation development district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the TDD Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The District has taken all necessary action to approve the District Projects. No further action or approvals by the District are necessary in connection with the financing of the District Projects.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

Section 2.2. Representations by the City.

The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a fourth class city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor of the City has been duly authorized to execute and deliver this Agreement.

C. The City has taken all necessary action for the approval of the Redevelopment Plan and the Redevelopment Contract.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or

any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

ARTICLE 3: COLLECTION OF FUNDS

Section 3.1. Imposition of the District Sales Tax.

The District shall approve a resolution that, subject to qualified voter approval, imposes the District Sales Tax. The resolution to impose the District Sales tax shall be in accordance with the Order. The District Sales Tax shall be collected by the City as set forth in this Article and the District Sales Tax Revenue shall be used to repay Obligations that finance the District Projects or costs incurred by the City to fund the District Projects.

Section 3.2. Collection of the District Sales Tax.

The City agrees to perform for the District all functions incident to the administration, collection, and enforcement of the District Sales Tax, pursuant to the TDD Act and this Agreement. The District will enact a resolution that imposes the District Sales Tax (subject to qualified voter approval), authorizes the City to perform all functions incident to the administration, collection, enforcement, and operation of the District Sales Tax and that prescribes the forms and administrative rules and regulations for reporting and collecting the District Sales Tax. The District Sales Tax Revenues shall be deposited by the City in accordance with the resolution adopted by the District. The District may amend the forms, administrative rules and regulations applicable to the administration, collection, enforcement and operation of the District Sales Tax.

Section 3.3. Administrative Fee for Collection of the District Sales Tax.

The City shall receive an Administrative Fee for collecting and administering the District Sales Tax in the amount of one percent (1%) of the total District Sales Tax Revenues, including that portion of the District Sales Tax Revenues that are collected and deposited in the Special Allocation Fund pursuant to the TIF Act. In the event that the one percent (1%) Administrative Fee does not fully reimburse the City for actual costs and expenses incurred in fulfilling its obligations under Section 3.2, then the City shall receive reimbursement for such actual costs that exceed the Administrative Fee.

Section 3.4. Operating Costs.

The City, on behalf of the District, shall pay for the Operating Costs of the District from District Sales Tax Revenue. The Operating Costs shall be included in the District's annual budget, as provided in Section 4.4. In the course of performing the administrative duties set forth in Section 3.1, the City may incur Operating Costs for the District, which shall be approved by the District.

Section 3.5. Enforcement of the District Sales Tax.

The District authorizes the City, to the extent permitted by law, to take all actions necessary for collection and enforcement of the District Sales Tax. The City may, in its own name or in the name of the District, prosecute or defend an action, lawsuit or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure the payment of the District Sales Tax. The District hereby agrees to cooperate fully with the City and to take all action necessary to effect the

substitution of the City for the District in any such action, lawsuit or proceeding if the City shall so request.

Section 3.6. Distribution of the District Sales Tax Revenue.

Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the City shall, not later than the fifteenth (15th) day of each month, distribute the District Sales Tax Revenues received in the preceding month in the following order of priority:

A. Pursuant to the TIF Act and the Redevelopment Plan, as amended, one-half (1/2) of the District Sales Tax Revenue which is generated within the Redevelopment Area will be captured as Economic Activity Taxes and deposited by the City into the Special Allocation Fund.

B. The City shall deduct one percent (1%) of the total District Sales Tax Revenue collected each month for its Administrative Fee. The calculation of the 1% Administrative Fee shall include the portion of the District Sales Tax Revenue that is captured in the Special Allocation Fund pursuant to paragraph A of this Section.

C. The City shall pay Operating Costs of the District.

D. The City shall transfer the remaining District Sales Tax Revenue to the Trustee for distribution in accordance with the Bond Documents, or shall disburse the remaining District Sales Tax Revenue to pay for Project Costs actually incurred by the City.

Section 3.7. Records of the District Sales Tax.

The City shall keep accurate records of the District Sales Tax due and collected and copies of such records shall be made available to the District on a monthly basis. Any City records pertaining to the District Sales Tax shall be provided to the District upon written request of the District, as permitted by law.

Section 3.8. Repeal of the District Sales Tax.

When all Obligations that have been issued to fund the District Projects have been repaid in full or when the City has been fully reimbursed for the costs incurred by the City to finance the District Projects, whichever occurs later, the District shall implement the procedures in the TDD Act for repeal of the District Sales Tax and abolishment of the District. The District shall not implement the procedures for repeal or modification of the District Sales Tax and abolishment of the District if: (1) any District Sales Tax Revenue is due to the City for outstanding Administrative Fees or Enforcement Funds; (2) any of the District Projects are not yet finally complete; (3) any of the Project Costs have not been fully paid; or (4) if the District, with the prior written consent of the City, has approved another project pursuant to the TDD Act. The City's obligation to perform for the District all functions incident to the administration, collection, enforcement and operation of the District Sales Tax shall terminate concurrent with the repeal of the District Sales Tax. Upon repeal of the District Sales Tax, the City shall:

A. Retain the City's Administrative Fee and any Enforcement Funds to which it is entitled in accordance with this Agreement.

B. Pay all outstanding Operating Costs.

C. Retain any remaining District Sales Tax until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the TDD Act.

ARTICLE 4: FINANCING DISTRICT PROJECTS

Section 4.1. Design and Construction of District Projects.

As allowed by the TDD Act, the District's role in implementing the Redevelopment Plan is solely to fund and assist in the funding of the District Projects. The District Projects shall be designed and constructed by or at the direction of the City, and the District shall have no obligation to design and construct the District Projects. The District Projects shall be designed and constructed on a schedule to be determined by the City, in accordance with the Redevelopment Plan and Redevelopment Agreement.

Section 4.2. Financing the District Projects.

The City shall provide or cause to be provided the financing of the District Projects in accordance with the Redevelopment Plan, the Redevelopment Contract and the Bond Documents, and the District shall not issue or incur any Obligations to finance the District Projects. The District shall impose the District Sales Tax within the boundaries of the District, which shall be applied in the manner provided in the Redevelopment Agreement and the Bond Documents.

Section 4.3. Ownership and Maintenance of District Projects.

As allowed by the TDD Act, the District's sole role is to fund and assist in the funding of the District Projects. The District shall have no ownership of the District Projects, and title to the District Projects shall at all times be vested in the name of the City. The City shall at all times be responsible for maintenance of the District Projects. The City shall be responsible for obtaining and maintaining insurance for the design, construction, operation and maintenance of the District Projects in such form and amounts as required by the City.

Section 4.4. Annual Budget.

The budget for the District's first fiscal year shall be prepared and submitted to the City Finance Director within ninety (90) days after execution of this Agreement. For each subsequent fiscal year of the District, the District shall, no earlier than one hundred eighty (180) days and no later than ninety (90) days prior to the first day of each fiscal year, submit a proposed budget for the upcoming fiscal year to the City Finance Director, which shall be approved by the Board of Directors. Each budget for the District shall generally be prepared in accordance with all applicable state statutes including Section 67.010 RSMo, as amended.

Section 4.5. New District Projects.

The District may use District Sales Tax Revenue, as such revenues are available, to pay Project Costs for new District projects which have been determined by the City Council to be necessary and approved in accordance with the TDD Act. The District shall not undertake new District projects without the prior approval of the City Council. Payments due to the City pursuant to the priority established in Section 2.4 for Administrative Fees, Enforcement Funds shall take priority over any costs associated with new District projects.

ARTICLE 5: SPECIAL COVENANTS

Section 5.1. Records of the District.

The City shall keep proper books of record and account on behalf of the District in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business affairs in accordance with generally accepted accounting principles consistently applied, and will furnish District, the original purchasers of any Obligations, the Trustee, the trustee of any subsequently issued Obligations, and to any requesting owner or owners of ten percent (10%) or more in aggregate principal amount of the bonds then outstanding, such information as they may reasonably request concerning the District, including such statistical and other operating information requested on a periodic basis, in order

to enable such parties to determine whether the covenants, terms and provisions of this Agreement have been met. In addition, the City shall furnish, on behalf of the District, annual audited financial statements for each fiscal year no later than June 30th following the end of such fiscal year. For that purpose, all pertinent books, documents and vouchers relating to its business, affairs and properties shall at all times during regular business hours be open to the inspection of such accountant or other agent (who may make copies of all or any part thereof provided that the confidentiality of all records shall be maintained pursuant to such confidentiality agreements as reasonably required) as shall from time to time be designated and compensated by the inspecting party.

Section 5.2. Records of the City.

The City shall keep and maintain adequate records pertaining to disbursements for reimbursement or payment of the costs of the District Projects and any Debt Service on Obligations issued to finance the District Projects. Such records shall be available for inspection by the District and the Trustee of any outstanding bonds upon reasonable notice.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

If any one or more of the following events shall occur and be continuing, such event or events shall constitute an Event of Default under this Agreement:

A. Failure by the City to make a payment, and the continuance of such failure for ten (10) days following written notice to City from the District of such failure, or failure by the District to make a payment, in a timely manner as required by this Agreement; or

B. Failure by the City or the District in the performance of any other covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for sixty (60) days after the non-defaulting party or the Trustee of any outstanding Obligations has given written notice to the defaulting party specifying such default.

Section 6.2. Remedies on Default.

Subject to any restrictions contained in the Bond Documents for any outstanding Obligations that are issued for the Redevelopment Plan against acceleration of the maturity of any such Obligations, if any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Agreement.

Section 6.3. Rights and Remedies Cumulative.

The rights and remedies reserved by either party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The District and the City shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 6.4. Waiver of Breach.

No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any

other covenant or agreement, and in case of an Event of Default, a non-defaulting party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

Section 6.5. Excusable Delays.

Neither Party shall be deemed to be in default of this Agreement because of Excusable Delays.

ARTICLE 7: MISCELLANEOUS

Section 7.1. Effective Date and Term.

This Agreement shall become effective on the date set forth herein. The District shall be abolished in accordance with Section 238.275, RSMo. The District Projects shall be deemed complete, for the purpose of abolishing the District, when all Obligations that have been issued to fund the District Projects have been repaid in full or when the City has been fully reimbursed for the costs incurred by the City to finance the District Projects, whichever occurs later.

Section 7.2. Immunities.

No recourse shall be had for the payment of the principal of or premium or interest on any Obligations or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the City or the District, or of any successor thereto, as such, either directly or through the City or the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.3. Modification.

The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the City and the District. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 7.4. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The Parties agree that the engagement of common special legal counsel does not materially limit the representation of the District or the City and will not adversely affect the relationship between the District and the City. To the extent that such common legal representation presents a conflict of interest, the City and the District hereby consent to common representation.

Section 7.5. Validity and Severability.

It is the intention of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.6. Execution of Counterparts.

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7.7. City Approvals.

Unless specifically provided to the contrary herein, all approvals of City hereunder may be given by the City Administrator or his designee without the necessity of any action by the Board of Aldermen.

Section 7.8. District Approvals.

Unless specifically provided to the contrary herein, all approvals of District hereunder may be given by the Executive Director or his designee without the necessity of any action by the Board of Directors.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

THE CITY OF BRANSON, MISSOURI

ATTEST:

Lisa Westfall, City Clerk

By: _____
Mayor Louis E. Schaefer

APPROVED AS TO FORM:

David W. Bushek
Gilmore & Bell, P.C.
Special City Counsel

**BRANSON LANDING TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
Louis E. Schaefer
Executive Director

END OF DOCUMENT