
DISTRICT PROJECT AGREEMENT
AMONG THE
CITY OF SUNSET HILLS, MISSOURI,
SHOPPES AT SUNSET HILLS COMMUNITY IMPROVEMENT DISTRICT,
AND
SUNSET HILLS OWNER LLC
Dated as of August __, 2021

Recitals 1

ARTICLE I

INCORPORATED ITEMS; DEFINITIONS; EXHIBITS

Section 1.01 Definitions 1
Section 1.02 Exhibits 3

ARTICLE II

CONSTRUCTION OF THE DISTRICT PROJECT

Section 2.01 District Project 3
Section 2.02 Schedule 3
Section 2.03 City Approvals to Control 3
Section 2.04 Insurance 3

ARTICLE III

EXCUSABLE DELAY

Section 3.01 Excusable Delay 4

ARTICLE IV

COMMUNITY IMPROVEMENT DISTRICT PARTICIPATION

Section 4.01 District Sales Tax 4
Section 4.02 Approval of District Project Costs 5
Section 4.03 Application of District Revenues; Reimbursement of District Project Costs 5
Section 4.04 Governance of the District 6

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01 Default 6
Section 5.02 Remedies; Results of Termination 7

ARTICLE VI

GENERAL PROVISIONS

Section 6.01 Modifications; Successors and Assigns 7
Section 6.02 Right to Transfer Property; Assignment of District Project Agreement 7
Section 6.03 Indemnification and Hold Harmless 8
Section 6.04 Notice 8
Section 6.05 Severability 10
Section 6.06 Governing Law; Venue 10

Section 6.07	Developer’s Right of Termination	10
Section 6.08	Counterparts	10
Section 6.09	Recording	10
Section 6.10	Consents and Approvals	10
Section 6.11	Representations.....	11
Section 6.12	Payment of City Fees.....	11
Section 6.13	Anti-Discrimination Against Israel Act.....	12

Exhibit A - Legal Description of the District

Exhibit B - Description of District Project

Exhibit C - Form of Certificate of Reimbursable District Project Costs

DISTRICT PROJECT AGREEMENT

THIS DISTRICT PROJECT AGREEMENT (this “Agreement”) is made and entered into as of this ____ day of August, 2021, by and among the **CITY OF SUNSET HILLS, MISSOURI** (the “City”), an incorporated city and political subdivision of the State of Missouri, the **SHOPPES AT SUNSET HILLS COMMUNITY IMPROVEMENT DISTRICT** (the “District”), a community improvement district and political subdivision of the State of Missouri, and **SUNSET HILLS OWNER LLC** (the “Developer”), a Delaware limited liability company (the City, the District and the Developer may each be referred to herein as a “Party,” and collectively as the “Parties”).

RECITALS

A. On February 22, 2021, the Developer submitted a “Petition for the Creation of a Community Improvement District” (as amended by the “Amended Petition for the Creation of a Community Improvement District” submitted to the City on March 3, 2021, the “CID Petition”) to the City in accordance with Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “CID Act”), requesting that the City adopt an ordinance creating the District, the boundaries of which are described on **Exhibit A** attached hereto.

B. The CID Petition contemplates that the District, upon its formation, will impose a one percent sales and use tax (the “District Sales Tax”) and use the revenues thereof to fund the improvements described on **Exhibit B** attached hereto.

C. On March 9, 2021 and March 23, 2021, the Board of Aldermen held duly-noticed public hearings concerning the creation of the District in accordance with the requirements of the CID Act. On March 23, 2021 adopted Ordinance No. 2201 (the “CID Ordinance”) establishing the District and authorizing the execution of a District Project Agreement.

D. On August 24, 2021, in lieu of the District Project Agreement approved by Ordinance No. 2201, the Board of Aldermen adopted Ordinance No. _____ authorizing execution of this Agreement (the “District Project Agreement Ordinance”).

E. On August ____, 2021, the District’s Board of Directors adopted Resolution No. _____ authorizing the execution of this Agreement.

F. The Parties desire to enter into this Agreement to establish the process by which the District will be governed and the District Project will be implemented and financed.

NOW, THEREFORE, for and in consideration of the foregoing Recitals (which are incorporated into this Agreement as an integral part hereof) and the promises, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE I

INCORPORATED ITEMS; DEFINITIONS; EXHIBITS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words and terms shall have the following meanings:

“*Affiliate*” means any entity that is controlled by the Developer or controlled by the same entity or entities that control the Developer.

“*Annual Operating Fund Deposit*” means (a) for the Fiscal Year ending December 31, 2021, the sum of \$10,000 and (b) for each subsequent Fiscal Year, an amount equal to 102% of the then-prior Fiscal Year’s Annual Operating Fund Deposit.

“*Certificate of Reimbursable District Project Costs*” means a Certificate of Reimbursable District Project Costs in substantially the same form of **Exhibit C** attached hereto, to be delivered by the Developer to the District pursuant to **Section 4.03**.

“*CID Petition*” means the Petition for the Creation of a Community Improvement District approved by the CID Ordinance.

“*City*” means the City of Sunset Hills, Missouri.

“*City Code*” means the Sunset Hills Municipal Code, as the same may be amended from time to time.

“*Costs of Issuance*” means all costs reasonably incurred by the District in furtherance of the issuance of any obligations issued by or on behalf of the District pursuant to the CID Act, if any, including, but not limited to the fees and expenses of financial advisors, municipal advisors and consultants, the District’s attorneys (including issuer’s counsel and special tax counsel), underwriters’ discount and fees, the costs of printing any obligations of the proposed District and any official statements relating thereto, the costs, if any, of credit enhancement, capitalized interest, debt service reserves and fees of any rating agency rating any obligations of the District.

“*Developer*” means Sunset Hills Owner LLC, a Delaware limited liability company, and its permitted successors and assigns.

“*District*” means Shoppes at Sunset Hills Community Improvement District.

“*District Operating Fund*” means the fund of that name established by the District pursuant to **Section 4.03**.

“*District Project*” means the improvements described on **Exhibit B** attached hereto and such other improvements and activities as may be permitted under the CID Act and the CID Petition and approved by resolution of the City’s Board of Aldermen and the District’s Board of Directors.

“*District Project Costs*” means the costs of constructing the District Project that are eligible under the CID Act to be paid by the District.

“*District Reimbursement Fund*” means the fund of that name established by the District pursuant to **Section 4.03**.

“*District Sales Tax*” means the one percent (1%) community improvement district sales and use tax to be imposed by the District pursuant to **Section 4.01**.

“*Fiscal Year*” means the District’s fiscal year, which, as of the date of this Agreement, is January 1 through December 31.

“*Property*” means the real property included in the District.

Section 1.02 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

- (a) Exhibit A – Legal Description of the District
- (b) Exhibit B – Description of District Project
- (c) Exhibit C – Form of Certificate of Reimbursable District Project Costs

ARTICLE II

CONSTRUCTION OF THE DISTRICT PROJECT

Section 2.01 District Project. Subject to the terms and conditions of this Agreement, the Developer, on behalf of the District, shall construct, or cause the construction of, the District Project in accordance with this Agreement and all applicable federal, state and local laws, rules, regulations, ordinances and approvals.

Section 2.02 Schedule. The Developer shall use commercially reasonable efforts to cause the completion of the District Project (as described on **Exhibit B**) by July 1, 2023 (subject to any excusable delay permitted by **Section 3.01**).

Section 2.03 City Approvals to Control. The Developer shall obtain or cause to be obtained all necessary zoning, building and other permits and approvals in conjunction with the completion of the District Project. Notwithstanding anything to the contrary contained herein, the applicable zoning, building and other permits and approvals shall control the specific development of the District Project.

Section 2.04 Insurance.

(a) The Developer will cause there to be insurance for the Property and the District Project as hereinafter set forth at all times during the construction of the District Project and continuing (with respect to (1) and (2) below) during the term of this Agreement. The policies for such insurance shall be placed with financially sound and reputable insurers licensed to transact business in the State of Missouri. The Developer shall, from time to time at the request of the City or the District, furnish the City and the District with “Acord” certificates of insurance on:

- (1) Property and casualty insurance to keep the Property constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible clauses). “Full Insurable Value” means the commercially reasonable level of insurance for the Property;

(2) Commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended (which for calendar year 2021 is equal to \$2,940,868 for all claims arising out of a single accident or occurrence and \$441,130 for any one person in a single accident or incurrance). Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended; and

(3) Workers' compensation insurance, with statutorily required coverage.

(b) Simultaneously with the execution of this Agreement and annually thereafter and throughout the term of this Agreement, the Developer shall provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City Attorney) covering the Developer's obligations to indemnify the City and the District, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). The Developer agrees to provide immediate written notice to the City and the District when a cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

ARTICLE III

EXCUSABLE DELAY

Section 3.01 Excusable Delay. Notwithstanding anything to the contrary contained herein, the time periods provided for herein shall be automatically extended by the number of days of delay caused by actions or events beyond the control of the Developer (but in no event beyond December 31, 2023), including acts of God, labor disputes, strikes, lockouts, civil disorder, war, lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with the construction or cause the construction of the District Project (provided all conditions precedent to the issuance of said permits and/or authorizations have been met), any delay caused by the Approved Store (defined herein), shortage or delay in the shipment of material or fuel, governmental action, fire, unusually adverse weather conditions, wet soil conditions, unavoidable casualties, litigation relating to the establishment of the District or any element of the District Project, or any causes beyond the Developer's reasonable control, or by any other cause that the Mayor in his or her reasonable discretion determines may justify the delay (an "Excusable Delay"). The Parties agree that as of the date of this Agreement, no condition or event exists, including the current scope of and restrictions associated with the existing COVID-19 pandemic, that would justify an Excusable Delay (however, future material changes in the scope of or restrictions associated with the COVID-19 pandemic may justify an Excusable Delay). The Developer shall notify the City and the District in writing within 30 days after a claimed event of the cause of the Excusable Delay. An Excusable Delay shall not include any condition or circumstance caused or extended by the Developer or an Affiliate or attributable to actions or inaction by the Developer or an Affiliate.

ARTICLE IV

COMMUNITY IMPROVEMENT DISTRICT PARTICIPATION

Section 4.01 District Sales Tax.

- (a) The District shall submit a ballot proposition to the District's qualified voters (as defined in the CID Act) authorizing the imposition of the District Sales Tax for a term of no more than 40 years.
- (b) Upon approval by the qualified voters of the District, the District shall promptly notify the Missouri Department of Revenue of the imposition of the District Sales Tax.

Section 4.02 Approval of District Project Costs. From time to time, the Developer may submit Certificates of Reimbursable District Project Costs in substantially the form of **Exhibit C** attached hereto to the City and the District, evidencing costs incurred by the Developer in the construction of the District Project. The City and the District shall review each Certificate of Reimbursable District Project Costs and provide written objections, if any, to the Developer within 30 days from receipt thereof. If any objections are provided, the Developer shall cure such objections and resubmit the Certificate of Reimbursable District Project Costs. If no objections are provided within 30 days of receipt, the Certificate of Reimbursable District Project Costs shall be deemed approved by the City and the District on the 31st day following receipt (unless affirmatively approved by the City before such date). The maximum amount of costs that may be included in approved Certificates of Reimbursable District Project Costs is \$5,358,705, excluding Costs of Issuance, if any, and the District's administrative fees and expenses, including but not limited to, fees and costs related to the District's formation, planning consultants, advisors, auditors and legal counsel.

Section 4.03 Application of District Revenues; Reimbursement of District Project Costs.

- (a) The District shall establish the District Operating Fund and the District Reimbursement Fund. All District Sales Tax revenues received by the District in each Fiscal Year shall be deposited as follows:
- (1) First, District Sales Tax revenues up to the applicable Annual Operating Fund Deposit shall be deposited into the District Operating Fund; and
 - (2) Second, all remaining District Sales Tax revenues shall be deposited into the District Reimbursement Fund.
- (b) The District shall use money deposited into the District Operating Fund to pay the costs of administering and operating the District and any other expenses approved by the District's Board of Directors (including, without limitation, transferring any moneys not needed for the administration and operation of the District to the District Reimbursement Fund). The Developer agrees, upon written request of the District, to promptly pay such costs (not in excess of the Annual Operating Fund Deposit) if the moneys in the District Operating Fund are insufficient for that purpose.
- (c) The District shall use money deposited into the District Reimbursement Fund to reimburse the Developer for any amounts advanced pursuant to **Section 4.03(b)** and for the District Project Costs identified in all approved or deemed approved Certificates of Reimbursable District Project Costs (including interest accruing on District Project Costs that have not yet been reimbursed at an annual rate of 7.00%, calculated using the 30/360 method and compounding semi-annually on each May 1 and November 1). The District shall, subject to annual appropriation, make payments to the Developer from the District

Reimbursement Fund on each May 1 and November 1 (or if such date is not a business day, the next business day thereafter), to the extent (1) the District has money in the District Reimbursement Fund and (2) the Developer has not yet been reimbursed by the District for the District Project Costs identified in all approved or deemed approved Certificates of Reimbursable District Project Costs.

(d) Notwithstanding anything to the contrary contained herein, either the District or an industrial development corporation on behalf of the District may, with the City's written permission and in lieu of the payments described in (c) above, issue notes, bonds or other obligations and use the proceeds thereof to reimburse the Developer for the District Project Costs identified in all approved or deemed approved Certificates of Reimbursable District Project Costs. Neither the stated interest rate nor the true interest cost on any notes, bonds or other obligations shall exceed 7.00% if the interest on such notes, bonds or other obligations is included in gross income for federal income tax purposes or 5.50% if the interest on such notes, bonds or other obligations is excludable from gross income for federal income tax purposes, as determined by the bond counsel selected pursuant to **Section 4.04(c)**.

Section 4.04 Governance of the District.

(a) The Developer and any successor in title to the Property, in their role as an entity that can designate authorized representatives to serve on the District's Board of Directors, shall cause the District to be governed in accordance with the CID Act and all other applicable laws. The Developer, as an owner of real property in the District, will authorize the appointment to the District's Board of Directors of two persons designated by the City who meet all other qualifications to serve on the District's Board of Directors, by designating such persons as its authorized representatives for the purpose of serving on the District's Board of Directors.

(b) The District shall engage a qualified District administrator and a qualified legal counsel to assist in managing the operations of the District and ensuring compliance with applicable laws.

(c) If the City authorizes the issuance of any bonds, notes or other obligations, the City shall have the right to designate bond counsel and a financial advisor for such obligations.

(d) The District shall promptly dissolve after all District Project Costs have been reimbursed to the Developer (or if bonds, notes or other obligations have been issued, once all such bonds, notes or other obligations have been repaid).

(e) Subject to the provisions of Section 3.01 hereof and any applicable cure period, the District shall promptly dissolve unless each of the following occur:

(1) by January 1, 2022, the Developer provides the City and the District with an executed lease agreement providing for occupancy by July 1, 2023 of ~~a retailer~~ Bass Pro Outdoor World, L.L.C. occupying at least 60,000 square feet and acceptable to the Board of Aldermen in its sole and absolute discretion (the "Approved Store"); and

(2) by July 1, 2023, the Approved Store must open for business within the District; and

(3) before the Approved Store opens for business within the District, the Developer obtains and the City approves an agreement providing cross-access to the property on which Helen Fitzgerald's is located.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01 Default. An “Event of Default” shall exist if the Developer fails to timely perform, in all material respects, any obligation or covenant of the Developer under this Agreement, and such failure is not cured to the City’s and the District’s reasonable satisfaction within 30 days after the City or the District gives written notice thereof to the Developer, or if it cannot reasonably be cured within thirty 30 days, then, subject to **Section 3.01**, for such additional time as may be necessary to cure such default so long as the Developer is diligently proceeding to effect a cure of such default.

Section 5.02 Remedies; Results of Termination.

(a) Upon the occurrence of an Event of Default, the City or the District may institute such proceedings as it deems necessary or desirable to cure and remedy such Event of Default, including but not limited to proceedings to compel specific performance or to terminate this Agreement.

(b) Upon the termination of this Agreement pursuant to this Section, a notice of termination shall be filed with the St. Louis County Recorder.

ARTICLE VI

GENERAL PROVISIONS

Section 6.01 Modifications; Successors and Assigns. The terms, conditions and provisions of this Agreement shall not be modified or amended except by mutual agreement in writing among the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective assigns and successors in interest or title to all or any portion of the Property; provided, however, the Developer may not assign its rights under this Agreement except in accordance with the provisions of **Section 6.02**.

Section 6.02 Right to Transfer Property; Assignment of District Project Agreement.

(a) *Transfer of Property.* The Developer (or successor in title) may transfer the Property or any portion thereof so long as written notice of such transfer is provided to the City and the District within ten days of the transfer.

(b) *Effect of Transfer.* Upon a transfer and satisfaction of all requirements of this Section, unless otherwise expressly elected by the transferor, all of the transferor’s rights and obligations hereunder with respect to the Property or applicable portion thereof, including, without limitation, those concerning construction, maintenance, use and financing of the District Project shall transfer to the transferee, and the transferor shall be released from any and all further obligations under this Agreement with respect to the Property or the applicable portion thereof.

(c) *Assignment by Developer.* The Developer may assign its interest to any entity so long as the City Attorney receives evidence of the assignee’s compliance with **Section 2.04** and **Section 6.09** at the time of the assignment.

(d) *Leases in Ordinary Course of Business Exempt from this Section.* The Parties acknowledge that the Developer may enter into leases with tenants in the ordinary course of operating the facilities within the District as a commercial development. Notwithstanding anything to the contrary contained herein, no

prior consent of the City or the District (other than as otherwise required by the City Code for occupancy and similar permits) will be required for any lease to a tenant in the ordinary course of business.

(e) *Financing.* Notwithstanding anything herein to the contrary, the City and the District hereby approve, and no prior consent shall be required in connection with, the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof or its rights and interests in this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the District Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment.

Section 6.03 Indemnification and Hold Harmless.

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

(b) The Developer agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, the District, and their respective governing body members, employees and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys' fees and court costs) resulting from, arising out of, or in any way connected with:

(1) the Developer's failure to comply with any provision of this Agreement beyond any applicable cure period;

(2) the negligence or intentional misconduct of the Developer, or an Affiliate, or their respective officers, employees and agents;

(3) the presence of hazardous wastes, hazardous materials or other environmental contaminants on the Property; or

(4) otherwise arising out of the construction of the District Project, the creation of the District, the imposition of the District Sales Tax or the administration of this Agreement.

If the validity or construction of the CID Act, and/or any ordinance of the City or resolution of the District adopted in connection with this Agreement or the CID Petition or otherwise affecting the District Project are contested in court, the Developer shall defend, hold harmless and indemnify the City and the District from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City and the District, if any.

(c) Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the District for damages or otherwise if all or any part of the CID Act and/or any ordinance of the City adopted in connection with this Agreement or the creation of the District 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.

(d) Notwithstanding the foregoing terms of this Section, the Developer is not obligated to defend, hold harmless or indemnify (1) the City with respect to any matter or expense resulting from or

arising out of the negligence or willful misconduct of the City or (2) the District with respect to any matter or expense resulting from or arising out of the negligence or willful misconduct of the District.

Section 6.04 Notice. Whenever notice or other communication is called for herein to be given or is otherwise given pursuant hereto, it shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

- (a) In the case of the City, to:

City of Sunset Hills, Missouri
3939 S. Lindbergh Blvd.
Sunset Hills, Missouri 63127
Attention: City Administrator

with copies to:

Curtis, Heinz, Garrett & O'Keefe, P.C.
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
Attention: Robert E. Jones

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attention: Mark D. Grimm

- (b) In case of the District, to:

Shoppes at Sunset Hills Community Improvement District
c/o Sansone Group
120 S. Central Avenue
Clayton, Missouri 63105
Attention: Grant Mechlin

With a copy to:

Blitz Bardgett & Deutsch, LC
120 S. Central Avenue, Suite 1500
St. Louis, Missouri 63105
Attention: Christopher R. Pieper

(c) In case of the Developer, to:

Shoppes at Sunset Hills Community Improvement District
c/o Sansone Group
120 S. Central Avenue
Clayton, Missouri 63105
Attention: Grant Mechlin

With a copy to:

Blitz Bardgett & Deutsch, LC
120 S. Central Avenue, Suite 1500
St. Louis, Missouri 63105
Attention: Christopher R. Pieper

All said notices by mail shall be deemed given on the day of deposit in the mail. A change of designated officer or address may be made by a Party by providing written notice of such request to the other parties.

Section 6.05 Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the parties hereto would have agreed to the valid provisions of this Agreement, or unless the court finds the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the Parties.

Section 6.06 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. Any action arising out of, or concerning, this Agreement shall be brought only in the Circuit Court of St. Louis County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of such court.

Section 6.07 Developer's Right of Termination. At any time, the Developer may terminate this Agreement by (1) giving written notice to the City and the District and (2) filing a petition with the City Clerk to terminate the District and the District Sales Tax in compliance with the requirements of the CID Act. Upon termination of this Agreement, the Parties shall have no further rights or obligations hereunder except as may expressly survive termination.

Section 6.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 6.09 Recording. The District shall, within 30 days of execution, record this Agreement in the real property records of the St. Louis County Recorder and upon such recording shall provide a copy to the City and the Developer.

Section 6.10 Consents and Approvals. The Mayor and the District Chairman are authorized to execute all documents on behalf of the City and the District, respectively, as may be required to carry out and comply with the intent of this Agreement. The Mayor and the District Chairman are also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City and the District, as applicable, such consents, estoppels and waivers relating to this Agreement as may be requested during the term hereof; provided, such consents, estoppels and/or waivers shall not waive an Event of Default or

materially change the nature of the transaction unless approved by the City's Board of Aldermen and the District's Board of Directors.

Section 6.11 Representations.

(a) *By the City.* The City represents, warrants, covenants and agrees as a basis for the undertakings on its part contained herein that:

(1) The City is a fourth-class city organized and existing under the laws of the State of Missouri, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(2) To the best of the City's knowledge, there are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

(b) *By the District.* The District represents, warrants, covenants and agrees as a basis for the undertakings on its part contained herein that:

(1) The District is a community improvement district organized and existing under the laws of the State of Missouri, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(2) To the best of the District's knowledge, there are no lawsuits either pending or threatened that would affect the ability of the District to perform this Agreement.

(c) *By the Developer.* The Developer represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(1) The Developer is a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to transact business in Missouri and has power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

(2) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.

(3) There are no lawsuits either pending or threatened that would affect the ability of the Developer to proceed with the completion or operation of the District Project.

Section 6.12 Payment of City Fees. The District and the Developer agree, jointly and severally, to reimburse reasonable and actual costs incurred by the City in connection with the creation of the District, the negotiation and execution of this Agreement, and review of annual budgets and reports required to be submitted by the District to the City in accordance with the Act.

Section 6.13 Anti-Discrimination Against Israel Act.

(a) The State of Missouri has adopted the “Anti-discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri, which provides that “[a] public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.” The Anti-discrimination Against Israel Act provides that any contract that fails to comply with the Anti-discrimination Against Israel Act’s provisions shall be void as against public policy.

(b) The District and the Developer hereby certify and agree that, to the extent the Anti-discrimination Against Israel Act is applicable to this Agreement, the District and Developer are not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by or organized under the laws of the State of Israel or persons or entities doing business with the State of Israel, in all respects within the meaning of the Anti-discrimination Against Israel Act.

(c) The foregoing certification shall not be deemed an admission or agreement that the Anti-discrimination Against Israel Act is applicable to this Agreement but the foregoing certification is provided if the Anti-discrimination Against Israel Act is applicable. If the Anti-discrimination Against Israel Act is initially deemed or treated as applicable to this Agreement, but it is subsequently determined not to apply to this Agreement for any reason including by reason of applicable federal law, including without limitation, 50 U.S.C. Section 4607, the repeal or amendment of the Anti-discrimination Against Israel Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Anti-discrimination Against Israel Act, then the foregoing certification shall cease and not exist.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties have set their hands and seals to this Agreement as of the day and year first above written.

CITY OF SUNSET HILLS, MISSOURI

By: _____
Name: Patricia F. Fribis
Title: Mayor

(SEAL)

ATTEST:

By: _____
Name: Brittany Gillett
Title: City Clerk/City Administrator

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

On this ___ day of _____, 2021, before me appeared **PATRICIA F. FRIBIS** to me personally known, who, being by me duly sworn, did say that she is the Mayor of the **CITY OF SUNSET HILLS, MISSOURI**, an incorporated city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed on behalf of said City by authority of its Board of Aldermen, and said **PATRICIA F. FRIBIS** acknowledged said instrument to be the free act and deed of said City.

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

Name: _____
Notary Public – State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:

**SHOPPES AT SUNSET HILLS
COMMUNITY IMPROVEMENT
DISTRICT**

By: _____
Name: _____
Title: Chairman

(SEAL)

ATTEST:

By: _____
Name: _____
Title: Secretary

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

On this ___ day of _____, 2021, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the Chairman of **SHOPPES AT SUNSET HILLS COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said District, and said instrument was signed and sealed on behalf of said District by authority of its Board of Directors, and said Chairman acknowledged said instrument to be the free act and deed of said District.

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

Notary Public

(SEAL)

My Commission Expires:

SUNSET HILLS OWNER LLC, a Missouri
limited liability company

By: _____
Name:
Title: Member

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

On this ___ day of _____, 2021, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the Member of **SUNSET HILLS OWNER LLC**, a Delaware limited liability company, and that he is authorized to sign the foregoing instrument on behalf of said limited liability company, and acknowledged to me that he executed the within instrument as said limited liability company’s free act and deed.

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

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE DISTRICT

A tract of land being a part of U.S. Survey 2453, Township 44 North, Range 5 East, City of Sunset Hills, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the intersection of the northerly line of land now or formerly of A&R Properties, Inc. as recorded in Deed Book 9286, Page 939, St. Louis County Records with the easterly line of Lindbergh Boulevard (variable width); thence along said easterly line the following courses and distances: North 00 degrees 04 minutes 47 seconds West, 249.27 feet, North 19 degrees 32 minutes 45 seconds East 74.05 feet, North 11 degrees 34 minutes 56 seconds East, 122.58 feet, North 27 degrees 27 minutes 35 seconds East, 71.12 feet, North 44 degrees 33 minutes 20 seconds East, 355.20 feet and North 60 degrees 28 minutes 01 seconds East, 87.69 feet to the southerly line of Watson Road (variable width) (Highway 66); thence along said southerly line North 84 degrees 30 minutes 00 seconds East, (basis of bearings) 53.44 feet to the westerly line of land now or formerly of Midas Realty Corporation as recorded in Deed Book 6354, Page 362, St. Louis County Records; thence along said westerly line and the southerly line of said Midas Realty Corporation land the following courses and distances: South 05 degrees 33 minutes 50 seconds East, 163.06 feet and North 88 degrees 05 minutes 58 seconds East, 100.08 feet to the southerly line of land now or formerly of Louis C. and Helen Wang as recorded in Deed Book 7974, Page 1006, St. Louis County Records; thence along said southerly line North 88 degrees 06 minutes 00 seconds East, 100.38 feet to the westerly line of Sinnwell Estates Plat 2 as recorded in Plat Book 92, Page 38, St. Louis County Records; thence along said westerly line and the westerly line of Sinnwell Estates Plat 1 as recorded in Plat Book 81, Page 9, St. Louis County Records South 03 degrees 46 minutes 58 seconds West, 648.73 feet to the aforementioned northerly line of A&R Properties, Inc. land; thence along said northerly line South 89 degrees 55 minutes 58 seconds West, 633.90 feet to the point of beginning.

Which property is also shown on The Shoppes at Sunset Hills recorded in Plat Book 346, Page 442.

EXHIBIT B

DESCRIPTION OF DISTRICT PROJECT

The District Project consists generally of the CID Project as described in the Petition, the CID Ordinance and the District Project Agreement Ordinance. Specifically, the District Project includes, without limitation: (1) the demolition and removal, rehabilitation, renovation and equipping of the existing buildings and structures located within the District and to contract with any private property owner for purposes of the same; and (2) the construction of certain public improvements as permitted under the CID Act.

The estimated cost of the District Project is \$5,358,705, excluding Costs of Issuance as defined herein, as outlined below:

Building Redevelopment	\$4,996,205
Surface Lot/On Site Improvements	<u>362,500</u>
TOTAL	\$5,358,705

**Dollar amounts shown above are estimates and are not intended to represent maximum or actual expenditures within specific categories.

EXHIBIT C

FORM OF CERTIFICATE OF REIMBURSABLE DISTRICT PROJECT COSTS

CERTIFICATE OF REIMBURSABLE DISTRICT PROJECT COSTS

TO: City of Sunset Hills, Missouri
3939 S. Lindbergh Blvd.
Sunset Hills, Missouri 63127
Attention: City Administrator

Shoppes at Sunset Hills Community Improvement District
c/o Sansone Group
120 S. Central, Suite 500
Clayton, Missouri 63105
Attention: Chairman

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the District Project Agreement dated as of August __, 2021 (the “*Agreement*”) among the City of Sunset Hills, Missouri (the “*City*”), Shoppes at Sunset Hills Community Improvement District (the “*District*”), and Sunset Hills Owner LLC (the “*Developer*”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a District Project Cost that was incurred in connection with the completion of the District Project.
2. These District Project Costs have been paid by the Developer and are reimbursable under the CID Act and the Agreement.
3. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
4. All necessary permits and approvals required for the District Project are in full force and effect.
5. If any cost item to be reimbursed under this Certificate is deemed not to be eligible to be reimbursed by the District, the Developer shall have the right to substitute other eligible District Project Costs for payment hereunder.
6. The Developer is not in default or breach of any term or condition of the Agreement.

Dated this ____ day of _____, 20__.

SUNSET HILLS OWNER LLC

By: _____
[Name], [Title]

Approved for Payment this ____ day of _____, 20__:

CITY OF SUNSET HILLS, MISSOURI

By: _____
Mayor

**SHOPPES AT SUNSET HILLS COMMUNITY IMPROVEMENT
DISTRICT**

By: _____
Chairman

SCHEDULE 1
TO CERTIFICATE OF REIMBURSABLE DISTRICT PROJECT COSTS