



**AGENDA
COMMUNITY DEVELOPMENT COMMITTEE
Monday, October 27, 2014
5:30 PM**

Public Safety Building

I) Roll Call

II) Approval of Minutes – October 13, 2014

III) Items Requiring Council Action – November 3, 2014

- A. Central Park Redevelopment Area TIF Redevelopment Agreement for Gander Mountain (1st Reading)
- B. 226 West State Street Landmark Designation (2nd Reading)

IV) Other Business

- A. Building Code
- B. General Project Updates

NEXT MEETING: Monday, November 10, 2014 – 6:00 P.M. – Public Safety Building

General Citizen Comments: The City of O'Fallon welcomes comments from our citizens. The Illinois Open Meetings Act provides an opportunity for citizens to speak at all committee and Board meetings. However, 5 ILCS 120/1 mandates that NO action shall be taken on matters not listed on the agenda. Please submit your name to the chairman and limit your comments so that anyone present has the opportunity to speak.



MINUTES
COMMUNITY DEVELOPMENT COMMITTEE
5:30 PM Monday, October 13, 2014

Minutes of a regular meeting of the Community Development Committee of the City of O'Fallon, held at the Public Safety Building, 285 N. Seven Hills Road, O'Fallon, Illinois.

CALL TO ORDER: 5:30 PM

- I) **Roll Call** – *Committee members:* Jerry Albrecht (chair), Jerry Mouser, David Cozad, Ray Holden and Harlan Gerrish. *Other Elected Officials Present:* Ed True, Kevin Hagarty, John Drolet, Herb Roach, Michael Bennett, Courtney Cardona, and Jim Hursey. *Staff:* Ted Shekell, Walter Denton. *Visitors:* Fred Bock, Sue Beeler, Paul Homann, Keith Sparks, Dave Witter, Stu Kasten, Tom Martin, and Vern Malare.
- II) **Approval of Minutes from Previous Meeting**– All ayes. Motion carried.
- III) **Items Requiring Council Action**
 - A. 226 West State Street Landmark Designation (1st Reading) – Ted Shekell informed the committee that Sal Cincotta is seeking a Local Historic Landmark Designation for the Wachter building that he recently completed renovations on. The committee recommended approval of the designation with a vote of 5-0.
 - B. SEPA- Papa Murphy's Sign Permit (Motion) – Ted Shekell described the special promotion taking place at Papa Murphy's during the Halloween season. Mr. Hudson is requesting a 24 square foot banner to promote the event near the frontage of Highway 50. The committee recommended approval of the designation with a vote of 5-0.
 - C. SEPA- St. Jude's Crusader Tree Lot (Motion) – Ted Shekell provided an overview of the Christmas tree lot at Gator's this year. It is very similar to previous years. The committee recommended approval of the special event with a vote of 5-0.
 - D. St. Elizabeth's Hospital – Planned Use (2nd Reading) – Ted Shekell provided a brief overview of the plan and noted that no changes have occurred since the last committee meeting. The committee recommended approval of the planned use with a vote of 5-0.
 - E. Gander Mountain – Planned Use (2nd Reading) – Ted Shekell provided a brief overview of the plan and noted that Gander Mountain was needing to amend the site plan prior to Second Reading. They were seeking to add additional sq ft to the store. The site plan changed minimally, and they proposed 250 total parking spaces, with the city code requiring 244. Staff also reminded the committee Gander Mtn would be seeking TIF assistance and that once a draft agreement could be reached it would be forward to the council for their review. The committee recommended approval of the amended planned use with a vote of 5-0.
 - F. Route 50/Scott Troy TIF Registry Ordinance (2nd Reading) – Ted Shekell described the TIF registry ordinance, which is a required part of the eligibility study. The committee recommended approval with a vote of 5-0.

- G. Central City TIF Registry Ordinance – Ted Shekell described the TIF registry ordinance, which is a required part of the eligibility study. The committee recommended approval with a vote of 5-0.

IV) Other Business –

Staff provided a brief update of various projects in town, with general questions and discussion held by the Council members.

MEETING ADJOURNED: 7:00 PM

NEXT MEETING: October 27, 2014 – Public Safety Building

Prepared by: Ted Shekell, Director of Community Development



MEMORANDUM

TO: Community Development Committee
FROM: Justin Randall, Senior City Planner
THROUGH: Ted Shekell, Director of Community Development
DATE: October 27, 2014
SUBJECT: Central Park Redevelopment Area TIF Redevelopment Agreement for Gander Mountain (1st Reading)

Recommendation

The City's Special TIF Counsel, Terry Bruckert, has reviewed the attached redevelopment agreement, and he recommends the agreement, as attached, in substantially its final form. Staff recommends approving the Central Park Redevelopment Area TIF Redevelopment Agreement for Gander Mountain as proposed.

Project Background and Summary

Attached is the proposed Central Park Redevelopment Area TIF Redevelopment Agreement for the proposed Gander Mountain sporting goods retail store. The proposal is for a 61,000 sq ft retail store on 5.64 acres of land consisting of three parcels generally located at 1234 Central Park Drive, zoned B-1(P), Planned Community Business District. The agreement provides that the Commercial project will be reimbursed for eligible costs (as identified in Exhibit G,) up to 50% of the actual property tax increment they generate, not to exceed the total cost as shown in Exhibit G of \$1,240,400. If they don't generate the increment then they don't get the full amount reimbursed. No other expenses will be reimbursed, and there are no City funds in this project. The project is not expected to cause any specific expenses to the City other than the normal cost of providing services such as police protection, etc. The Commercial Project is, however, expected to generate significant sales tax to the City.

Attachments:

Central Park Redevelopment Area TIF Redevelopment Agreement for Gander Mountain

DRAFT

REDEVELOPMENT AGREEMENT

between

CITY OF O'FALLON, ILLINOIS

and

COMMERCIAL REAL ESTATE INVESTORS LP

dated as of

_____, 2014

**CITY OF O'FALLON, ILLINOIS TAX INCREMENT FINANCING REDEVELOPMENT PLAN
CENTRAL PARK REDEVELOPMENT AREA**

REDEVELOPMENT AGREEMENT

This Redevelopment Agreement (this “**Agreement**”) is made and entered into as of the ____ day of _____, 2014 by and between the City of O’Fallon Illinois, an Illinois municipal home rule corporation (the “**City**”), and Commercial Real Estate Investors LP, a Illinois limited liability partnership located at 1331 Park Plaza Dr., Suite 4, O’Fallon, IL 62269 (“**Commercial Real Estate Investors LP**”).

RECITALS

The following Recitals are incorporated herein and made a part hereof.

A. The City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the City, foster increased economic activity within the City, to increase employment opportunities within the City, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the City.

B. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the “**TIF Act**”), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act.

C. Pursuant to the TIF Act, a plan for redevelopment known as the “City of O’Fallon, Illinois Tax Increment Financing Redevelopment Plan – Central Park Redevelopment Area” (the “**Redevelopment Plan**”) for an area designated therein (the “**Redevelopment Project Area**”), consisting of approximately 145 acres, as legally described in the Redevelopment Plan and on **Exhibit A** hereto, has been prepared and reviewed by the City. Within the Redevelopment Project Area is a parcel of land designated as the “Commercial Real Estate Investors LP Parcel,” (defined below and legally described on **Exhibit B** hereto) which is the basis for this Agreement and described more fully within. Commercial Real Estate Investors LP is the owner of the Commercial Real Estate Investors LP Parcel.

D. In accordance with the TIF Act, the City (i) convened a Joint Review Board which performed all actions required under the TIF Act, and (ii) held and conducted a public hearing with respect to the Redevelopment Plan and the Redevelopment Project at a meeting of the City Council (the “**Corporate Authorities**”) of the City held on April 2, 2012, notice of such hearing having been given in accordance with the TIF Act.

E. The Corporate Authorities, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances: (1) Ordinance No. 3754, approving the Redevelopment Plan, (2) Ordinance No. 3754, designating the Redevelopment Project Area, and (3) Ordinance No. 3753, adopting tax increment financing for the Redevelopment Project Area, which contains Commercial Real Estate Investors LP’s Parcel, and establishing a special tax allocation fund therefor (the “**Special Tax Allocation Fund**”).

F. Commercial Real Estate Investors LP has presented a Development Project to the City, to be undertaken by Commercial Real Estate Investors LP and the City, in accordance with the terms and conditions of this Agreement.

G. Commercial Real Estate Investors LP agrees to complete the Commercial Real Estate Investors LP Improvements (as defined herein) in connection with Commercial Real Estate Investors

LP's Development Project, subject to the conditions herein and the City's performance of its obligations under this Agreement.

H. The City strongly supports increased economic development to provide additional jobs for residents of the City, to expand retail business and commercial activity within the City and to develop a healthy economy and stronger tax base. The City and Commercial Real Estate Investors LP reasonably expect that completion of Commercial Real Estate Investors LP's Development Project will generate additional tax revenues and economic activity in furtherance of the goals of the Redevelopment Plan.

I. It is necessary for the successful completion of Commercial Real Estate Investors LP's Development Project that the City enter into this Agreement with Commercial Real Estate Investors LP to provide for the redevelopment of Commercial Real Estate Investors LP's Parcel within the larger Redevelopment Project Area, thereby implementing the Redevelopment Plan.

J. Commercial Real Estate Investors LP is unable and unwilling to undertake the redevelopment of Commercial Real Estate Investors LP's Parcel but for certain tax increment financing ("TIF") incentives to be provided by the City in accordance with the TIF Act and the home rule powers of the City, which the City is willing to provide under the terms and conditions contained herein. The parties acknowledge and agree that but for the TIF incentives to be provided by the City, Commercial Real Estate Investors LP cannot successfully and economically develop Commercial Real Estate Investors LP's Parcel in a manner satisfactory to the City. The City has determined that it is desirable and in the City's best interests to assist Commercial Real Estate Investors LP in the manner set forth herein, and as this Agreement may be supplemented and amended.

K. Commercial Real Estate Investors LP proposes to construct the Commercial Real Estate Investors LP Improvements in connection with the Commercial Real Estate Investors LP's Development Project on Commercial Real Estate Investors LP's Parcel and has demonstrated to the City's satisfaction that Commercial Real Estate Investors LP has the experience and capacity to complete the Commercial Real Estate Investors LP Improvements.

L. The City, in order to stimulate and induce development of Commercial Real Estate Investors LP's Parcel, has determined that it is in the best interests of the City to finance certain Commercial Real Estate Investors LP's Development Project Costs through Incremental Property Taxes, all in accordance with the terms and provisions of the constitution and statutes of the State of Illinois, including the TIF Act and this Agreement.

M. The Corporate Authorities hereby determine that the implementation of Commercial Real Estate Investors LP's Development Project and the fulfillment generally of the Redevelopment Plan are in the best interests of the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

N. Pursuant to the provisions of the TIF Act, the City is authorized to enter into this Agreement to evidence the City's obligation to pay certain Commercial Real Estate Investors LP's Development Project Costs incurred in furtherance of the Redevelopment Plan and Commercial Real Estate Investors LP's Development Project, and to pledge the Incremental Property Taxes to the payment of the Reimbursable Commercial Real Estate Investors LP's Development Project Costs to assist in financing of Commercial Real Estate Investors LP's Development Project.

O. This Agreement has been submitted to the Corporate Authorities of the City for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the City according to the terms

hereof, and any and all actions of the Corporate Authorities of the City precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

P. Commercial Real Estate Investors LP is a duly formed and validly existing limited liability partnership under the laws of Illinois. The execution, delivery and performance of this Agreement by Commercial Real Estate Investors LP has been duly and validly authorized by all necessary action on the part of Commercial Real Estate Investors LP.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE ONE

INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the City and of Commercial Real Estate Investors LP according to the tenor and import of the statements in such recitals.

ARTICLE TWO

DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Agreement” means this Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Agreement Term” means the period beginning as of the effective date of the Redevelopment Plan and concluding within 23 years, or, if earlier, after all Reimbursable Commercial Real Estate Investors LP’s Development Project Costs (described below) have been paid by the City to Commercial Real Estate Investors LP.

“Approving Ordinance” means the ordinance(s) of the City to be adopted by the Corporate Authorities, from time to time, authorizing tax increment financing for the Redevelopment Project Area, and all related ordinances, resolutions and proceedings.

“Authorized City Representative” means the Mayor of the City, the City Administrator or designees or assigns.

“Business Day” means a day which is not a Saturday, Sunday or any other day on which banking institutions in New York, New York, or the city or cities in which the administrative offices or payment office of the Trustee is located, are required or authorized to close.

“Certificate of Substantial Completion” means a document substantially in the form of **Exhibit D** attached hereto and incorporated by reference herein, delivered by Commercial Real Estate

Investors LP to the City, in accordance with this Agreement in connection with and evidencing the substantial completion of Commercial Real Estate Investors LP Improvements as identified on **Exhibit F** attached hereto.

“Certificate of Reimbursable Commercial Real Estate Investors LP’s Development Project Costs” means a document, substantially in the form of **Exhibit E** attached hereto and incorporated by reference herein, provided by Commercial Real Estate Investors LP to the City evidencing Reimbursable Commercial Real Estate Investors LP’s Development Project Costs incurred by Commercial Real Estate Investors LP with respect to Commercial Real Estate Investors LP Improvements as identified on **Exhibit F** attached hereto, which Commercial Real Estate Investors LP may submit to pay for Reimbursable Commercial Real Estate Investors LP’s Development Project Costs associated with Commercial Real Estate Investors LP Improvements.

“City” means the City of O’Fallon, St. Clair County, Illinois, an Illinois home rule municipality.

“City Attorney” means an attorney at law or firm of attorneys acceptable to the City and Commercial Real Estate Investors LP and serving in such capacity at any time on behalf of the City, duly admitted to the practice of law before the highest court of the State of Illinois.

“City Council” means the City Council of the City of O’Fallon, Illinois.

“Commencement Date” means the first day of the month following the first month in which the City receives Incremental Property Taxes pursuant to the TIF Act and such other authority as shall be applicable or any successor statutory revenues that are attributable to Commercial Real Estate Investors LP Improvements to be constructed within any portion of the Redevelopment Project Area pursuant to this Agreement.

“Concept Plan” means the plans for Commercial Real Estate Investors LP’s Development Project, together with all supplements, amendments or corrections submitted by Commercial Real Estate Investors LP and approved by the City in accordance with this Agreement, as set forth in **Exhibit C** hereto, as amended from time to time in accordance with this Agreement.

“Corporate Authorities” means the Mayor and the City Council.

“Governmental Approvals” means all plat approvals, re-zonings, text amendments or other zoning changes, site or development plan approvals, planned unit development approvals, conditional use permits, re-subdivisions or other subdivision approvals, variances, sign approvals, building permits, grading permits, occupancy permits or similar approvals, utility regulatory approvals, and other approvals pertaining to the roadway widenings and reconfigurations and intersection and other street improvements from the City, St. Clair County, the State of Illinois, the appropriate sewer and other utility authorities, the U.S. Army Corps of Engineers, the Illinois Department of Natural Resources, and other or similar approvals required for the implementation of Commercial Real Estate Investors LP’s Development Project.

“Commercial Real Estate Investors LP’s Development Project” means the development project for Commercial Real Estate Investors LP’s Parcel described in the Concept Plan attached hereto as **Exhibit C**, and consistent with the Redevelopment Plan.

“Commercial Real Estate Investors LP’s Development Project Costs” means the sum total of all reasonable or necessary costs actually incurred in performing Commercial Real Estate Investors LP’s Development Project and any such costs incidental to Commercial Real Estate Investors LP’s

Development Project which are authorized for reimbursement under the TIF Act and the Redevelopment Plan. **Exhibit G** provides an itemized list of such costs, which are available for reimbursement under the TIF Act and are included in the Reimbursable Redevelopment Project Costs under the Redevelopment Plan.

“Commercial Real Estate Investors LP Improvements” and “Work” mean all work necessary to prepare Commercial Real Estate Investors LP’s Parcel and to construct the improvements for Commercial Real Estate Investors LP’s Development Project as more fully described on **Exhibit F** hereto, the completion of which shall be evidenced as set forth in the Certificate of Substantial Completion, and all other work reasonably necessary to effectuate the intent of this Agreement.

“Commercial Real Estate Investors LP’s Parcel” means a parcel of real property located within the Redevelopment Project Area (defined below) that is approximately 3.18 acres, more or less, located on Lot 23 A & B of the plat of Central Park Plaza 3rd Addition 1st Amendment, in the City of O’Fallon, County of St. Clair and State of Illinois, and is depicted and more fully described in **Exhibit B**, upon which the Commercial Real Estate Investors LP Improvements will be constructed by Commercial Real Estate Investors LP.

“Incremental Property Taxes” means that portion of the ad valorem taxes, if any, arising from the taxes levied upon Commercial Real Estate Investors LP’s Parcel by any and all taxing districts or municipal corporations having the power to tax real property in Commercial Real Estate Investors LP’s Parcel, which taxes are attributable to the increases in the then current equalized assessed valuation of Commercial Real Estate Investors LP’s Parcel over and above the Total Initial Equalized Assessed Valuation of each such piece of property, all as determined by the County Clerk of the County of St. Clair, Illinois, pursuant to and in accordance with the TIF Act, and includes any replacement, substitute or amended taxes.

“Intergovernmental Agreement” means collectively any agreements and/or settlements entered into by and between the City and any taxing districts, including but not limited to the Central Scholl District No. 104 and O’Fallon High School District No. 203, pursuant to which the City may agree to pledge any portion of the Incremental Property Taxes generated each year within the Redevelopment Project Area to such taxing districts.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof.

“Redevelopment Plan” means a plan entitled “City of O’Fallon, Illinois Tax Increment Financing Redevelopment Plan – Central Park Redevelopment Area” dated January 23, 2012, approved by the Corporate Authorities on May 7, 2012 pursuant to Ordinance No. 3754, as such plan may be amended from time to time.

“Redevelopment Project Area” means a certain area of the City known as the City of O’Fallon, St. Clair County, Illinois Tax Increment Finance District, and includes Commercial Real Estate Investors LP’s Parcel upon which Commercial Real Estate Investors LP’s Development Project will be implemented and constructed. The area consists of approximately 145 acres and is more particularly described in **Exhibit A** attached hereto and incorporated by reference herein.

“Reimbursable Commercial Real Estate Investors LP’s Development Project Costs” means those Commercial Real Estate Investors LP’s Development Project Costs that are eligible for reimbursement to Commercial Real Estate Investors LP from Incremental Property Taxes under the Redevelopment Plan and the TIF Act in accordance with this Agreement. Such costs shall include, but not

be limited to, all site development and land improvements (exclusive of land acquisition and retail building costs) necessary to implement Commercial Real Estate Investors LP's Development Project, including but not limited to grading and site preparation, mine remediation, construction and/or relocation of streets, roads, sidewalks, sanitary sewers, water mains, drainage and storm water control and detention facilities, legal, engineering and similar design costs provided in conjunction with constructing the eligible improvements.

“Related Party” means any party or entity related to Commercial Real Estate Investors LP by one of the relationships described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

“Special Tax Allocation Fund” means the Special Tax Allocation Fund created pursuant to the TIF Act and Ordinance No. 3755 adopted by the City Council on May 7, 2012, and includes a Commercial Real Estate Investors LP's Subaccount and any other subaccounts into which the Incremental Property Taxes are from time to time deposited in accordance with the TIF Act, any Approving Ordinance, and this Agreement.

“State” means the State of Illinois.

“Substantial Completion” or **“Substantially Complete”** or **“Substantially Completed”** means the date on which Commercial Real Estate Investors LP delivers the Certificate of Substantial Completion with respect to a phase of the Commercial Real Estate Investors LP Improvements component of Commercial Real Estate Investors LP's Development Project to the City.

“TIF Act” means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-74.4-1, *et seq.*, as amended.

“TIF Ordinance” means Ordinance No. 3753 adopted by the City Council on May 7, 2012, adopting tax increment financing for the Redevelopment Project Area, including Commercial Real Estate Investors LP's Parcel.

“Total Initial Equalized Assessed Valuation” means the total initial equalized assessed value of the taxable real property within Commercial Real Estate Investors LP's Parcel as determined by the County Clerk of the County of St. Clair, Illinois, for the calendar year 2013, in accordance with the provisions of Section 11-74.4-9 of the TIF Act.

ARTICLE THREE

CONSTRUCTION

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

- (d) Headings of Articles and Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (g) The Mayor, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the City and with the effect of binding the City as limited by and provided for in this Agreement. Commercial Real Estate Investors LP is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the City as having been properly and legally given by the City.
- (h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Commercial Real Estate Investors LP in a different manner, Commercial Real Estate Investors LP hereby designates its Managing Member, Darrell G. Shelton, as its authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Commercial Real Estate Investors LP and with the effect of binding Commercial Real Estate Investors LP in that connection (such individual being an “**Authorized Commercial Real Estate Investors LP Representative**”). Commercial Real Estate Investors LP shall have the right to change its Authorized Commercial Real Estate Investors LP Representative by providing the City with written notice of such change which notice shall be sent in accordance with **Section 8.6** of this Agreement.

ARTICLE FOUR

DEVELOPER DESIGNATION AND REDEVELOPMENT PLAN

Section 4.1. Commercial Real Estate Investors LP Designation. The City hereby selects Commercial Real Estate Investors LP to perform or cause to be performed the Work related to the Commercial Real Estate Investors LP Improvements and to construct or cause to be constructed the Commercial Real Estate Investors LP Improvements as provided in this Agreement.

Section 4.2. Redevelopment Plan. The City and Commercial Real Estate Investors LP agree to cooperate in implementing Commercial Real Estate Investors LP's Development Project in accordance with the Redevelopment Plan and the parties' respective obligations set forth in this Agreement.

ARTICLE FIVE

CONSTRUCTION OF COMMERCIAL REAL ESTATE INVESTORS LP'S DEVELOPMENT PROJECT

Section 5.1. Performance of the Work.

(a) Commercial Real Estate Investors LP Improvements. Commercial Real Estate Investors LP shall advance funds for and commence and complete each of its obligations (or cause the completion of its obligations by entering into agreements with third parties) under this Agreement with respect to the acquisition, construction and completion of the Commercial Real Estate Investors LP Improvements in accordance on or before May 1, 2014.

(b) Construction Schedule. The performance of Commercial Real Estate Investors LP set forth in this section is premised on Commercial Real Estate Investors LP receiving timely approval by the City Council of all planning approvals required to accommodate the Concept Plan, including uses requested by Commercial Real Estate Investors LP for Commercial Real Estate Investors LP's Development Project and the timely review and issuance by the City of all Governmental Approvals within its control. Performance hereunder is also premised on the receipt by Commercial Real Estate Investors LP, with a copy to the City, of an opinion of the City Attorney as to the validity and enforceability under Illinois law of this Agreement.

Section 5.2. Governmental Approvals; Extension of Time.

(a) Parties to Cooperate. The City agrees to cooperate with Commercial Real Estate Investors LP and to expeditiously process and timely consider all applications for Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State, and this Agreement. The parties specifically agree to use their best efforts to cooperate with each other to obtain all necessary permits and approvals by the Illinois Department of Transportation and other public entities necessary to carry out Commercial Real Estate Investors LP's Development Project. The City agrees to cooperate with Commercial Real Estate Investors LP in Commercial Real Estate Investors LP's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the City and upon request of Commercial Real Estate Investors LP, will promptly execute any applications or other documents (upon their approval by the City) which Commercial Real Estate Investors LP intends to file with such other governmental or quasi-governmental entities in connection with Commercial Real Estate Investors LP's Development Project. The City shall further promptly respond to, or process, and consider reasonable requests of Commercial Real Estate Investors LP for: applicable demolition permits, building permits; driveway permits; curb cut permits, or other permits necessary for the construction of Commercial Real Estate Investors LP's Development Project.

(b) Extension of Time. Notwithstanding any provision of this Agreement to the contrary, Commercial Real Estate Investors LP may, upon reasonable cause shown, request the Mayor or his designee to extend or waive times for performance. The Mayor or his designee may, but is not required to, consent to such extensions or waivers for a period not exceeding one year without further action by the Corporate Authorities. In the event that the Mayor or his designee extends or waives time

for Commercial Real Estate Investors LP's performance under **Section 5.1(a)** of this Agreement, the City's time for performance under **Section 5.1(b)** shall be extended to conform to Commercial Real Estate Investors LP's extended time for performance.

Section 5.3. Concept Plan.

(a) **Approval of Concept Plan.** The Concept Plan, attached hereto as **Exhibit C** has been approved by the Corporate Authorities.

(b) **Changes.** Commercial Real Estate Investors LP may make changes to the Concept Plan or any aspect thereof as site conditions or other issues of feasibility may dictate, as may be necessary or desirable to address the acquisition of additional real property to be included in Commercial Real Estate Investors LP's Parcel or alterations in the description of the real property to be included in Commercial Real Estate Investors LP's Parcel, or as may be necessary or desirable in the determination of Commercial Real Estate Investors LP to enhance the economic viability of Commercial Real Estate Investors LP's Development Project, in a manner consistent with applicable City ordinance. The Concept Plan shall also be deemed to be modified from time to time to reflect changes to the locations and configurations of the improvements which comprise Commercial Real Estate Investors LP's Development Project to the extent such changes are initiated by Commercial Real Estate Investors LP or are accepted by Commercial Real Estate Investors LP in connection with the processing and approval of a concept plan, a site/improvement plan or other Governmental Approvals for Commercial Real Estate Investors LP's Development Project.

Section 5.4. Construction of Commercial Real Estate Investors LP Improvements.

(a) **Contracts/Commercial Real Estate Investors LP to Control Construction.** Commercial Real Estate Investors LP may enter into one or more construction contracts to complete the Commercial Real Estate Investors LP Improvements. Commercial Real Estate Investors LP shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, and construction of the Commercial Real Estate Investors LP Improvements, provided that the same shall, in any event, conform to and comply with the terms and conditions of the Redevelopment Plan and this Agreement, and all applicable state and local laws, ordinances and regulations (including, without limitation, applicable zoning, subdivision, building and fire codes), subject to any variances and other Governmental Approvals.

(b) **Modification of Construction.** Subject to the provisions set forth in **Section 5.1(a)** regarding Commercial Real Estate Investors LP Improvements, during the progress of Commercial Real Estate Investors LP's Development Project, Commercial Real Estate Investors LP may make such reasonable changes, including, without limitation, modification of the construction schedule, modification of the areas in which Commercial Real Estate Investors LP's Development Project is to be performed or on which buildings or other improvements are to be situated, expansion or deletion of items, revisions to the locations and configurations of improvements, revisions to the areas and scope of Commercial Real Estate Investors LP's Development Project, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any portion of Commercial Real Estate Investors LP's Parcel or as may be necessary or desirable, in the discretion of Commercial Real Estate Investors LP, to enhance the economic viability of Commercial Real Estate Investors LP's Development Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided, however, that Commercial Real Estate Investors LP's Development Project as modified shall generally conform to the development concept shown on the Concept Plan, and shall comply with applicable law and code, subject to any variances and other Governmental Approvals.

(c) **Modifications After Substantial Completion.** After Substantial Completion of the Commercial Real Estate Investors LP Improvements, the remaining portion of Commercial Real Estate Investors LP's Parcel may be regraded, reconfigured, redeveloped or otherwise modified, improvements within the remaining portion of Commercial Real Estate Investors LP's Parcel may be reconfigured, expanded, contracted, remodeled, reconstructed, replaced, or otherwise modified, and new improvements may be added to the remaining portion of Commercial Real Estate Investors LP's Parcel, and demolition may be undertaken in connection therewith, from time to time and in such manner as Commercial Real Estate Investors LP (or its successor(s) in interest, as owner or owners of the affected portion(s) of Commercial Real Estate Investors LP's Parcel) may determine, provided that any such modifications shall comply with applicable law and code, subject to any variances and other Governmental Approvals.

Section 5.5. Certificate of Substantial Completion.

(a) **Commercial Real Estate Investors LP Improvements.** To establish the completion date of the Commercial Real Estate Investors LP Improvements, Commercial Real Estate Investors LP shall furnish to the City a Certificate of Substantial Completion upon completion of the Commercial Real Estate Investors LP Improvements as described in **Exhibit F** attached hereto.

(b) **City Review.** The City shall, within thirty (30) days following delivery of the Certificate of Substantial Completion with respect to the Commercial Real Estate Investors LP Improvements, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The certificates shall be deemed verified and the Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such thirty (30)-day period after delivery to the City of the Certificate of Substantial Completion, the City furnishes Commercial Real Estate Investors LP with specific written objections to the status of performance based on failure of the construction to be in accordance with Governmental Approvals issued by the City, describing such objections and the measures required to correct such objections in reasonable detail. Commercial Real Estate Investors LP shall use reasonable efforts to cure such objections. The City shall have no basis to object to the Certificate of Substantial Completion with respect to any aspect of the construction that was previously inspected and approved.

(c) **Recording Certificates of Substantial Completion.** Upon acceptance of the Certificate of Substantial Completion of the Commercial Real Estate Investors LP Improvements by the City or upon the lapse of thirty (30) days after delivery thereof to the City without any written objections by the City or request by the City for additional time for review, not to exceed an additional ten (10) days, Commercial Real Estate Investors LP may record the Certificate of Substantial Completion with respect to each phase of the Commercial Real Estate Investors LP Improvements with the St. Clair County Recorder, and the same shall constitute evidence of the satisfaction of Commercial Real Estate Investors LP's agreements and covenants to perform the Work with respect to such phase (as applicable) of the Commercial Real Estate Investors LP Improvements pursuant to this Agreement.

ARTICLE SIX

REIMBURSEMENT OF DEVELOPMENT COSTS

Section 6.1. Pledge of Incremental Property Taxes. In consideration of Commercial Real Estate Investors LP's undertaking of Commercial Real Estate Investors LP's Development Project and

construction of the Commercial Real Estate Investors LP Improvements, including the incurring of Reimbursable Redevelopment Project Costs under the Redevelopment Plan, the City hereby pledges and agrees to apply the Incremental Property Taxes generated from Commercial Real Estate Investors LP's Parcel and deposited into the Special Tax Allocation Fund in accordance with this Agreement to pay Reimbursable Commercial Real Estate Investors LP's Development Project Costs incurred by Commercial Real Estate Investors LP. Except for a total of up to fifty percent (50%) of Incremental Property Taxes to be designated as "surplus funds" and/or distributed pursuant to the Intergovernmental Agreement, the City agrees that during the Agreement Term, the City shall not further encumber or pledge any portion of the Incremental Property Taxes generated from Commercial Real Estate Investors LP's Parcel to any other project or obligation or take any action inconsistent with the terms and intent of this Agreement.

Section 6.2. Reimbursable Commercial Real Estate Investors LP's Development Project Costs. Upon completion of Commercial Real Estate Investors LP's Development Project, Commercial Real Estate Investors LP may deliver to the City a Certificate of Reimbursable Commercial Real Estate Investors LP's Development Project Costs in substantially the same form as **Exhibit E** attached hereto for all Reimbursable Commercial Real Estate Investors LP's Development Project Costs incurred. Commercial Real Estate Investors LP shall, at the City's request, provide itemized invoices, receipts or other information, if any, requested by the City to confirm that any such costs are so incurred and do so qualify. Commercial Real Estate Investors LP shall also certify that such costs are eligible for reimbursement under the TIF Act. The City shall promptly approve or disapprove such Certificate, but in any event no later than thirty (30) days of the submittal thereof. If the City disapproves of the Certificate, it shall state in writing the reasons therefor, identifying the ineligible costs and the basis for determining the costs to be ineligible, whereupon Commercial Real Estate Investors LP shall have the right to identify and substitute other Commercial Real Estate Investors LP's Development Project Costs as Reimbursable Commercial Real Estate Investors LP's Development Project Costs with a supplemental application for payment. If the City fails to approve or disapprove the Certificate within thirty (30) days of the submittal thereof, the Certificate shall be deemed approved.

Upon approving the Certificate, or the Certificate being deemed approved, the City shall issue Commercial Real Estate Investors LP a non-recourse note ("Commercial Real Estate Investors LP TIF Note") which identifies the total amount City will pay Commercial Real Estate Investors LP for Reimbursable Commercial Real Estate Investors LP's Development Project Costs. As funds become available in the Special Tax Allocation Fund, the City will remit payment to Commercial Real Estate Investors LP within thirty (30) days from the time those funds first become available for distribution.

Section 6.3. Reimbursement from Incremental Property Taxes Limited to Reimbursable Commercial Real Estate Investors LP's Development Project Costs. The parties agree that each of the categories of costs set forth in the Redevelopment Plan constitute Reimbursable Commercial Real Estate Investors LP's Development Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement. Subject to the provisions of the TIF Act, Commercial Real Estate Investors LP shall be entitled to reimbursement for Commercial Real Estate Investors LP's Development Project Costs from any of the categories set forth therein and as agreed to within this Redevelopment Agreement.

Section 6.4. Annual Accounting and Adjustments. After the close of each calendar year during the Agreement Term (in any event not later than February 15th of the February immediately following the close of the calendar year) the City shall cause its Treasurer or other financial officer charged with responsibility for the Special Tax Allocation Fund to provide to Commercial Real Estate Investors LP an accounting of the receipts and expenditures from the Special Tax Allocation Fund at the close of the calendar year.

ARTICLE SEVEN

SPECIAL TAX ALLOCATION FUND; COLLECTION AND USE OF INCREMENTAL PROPERTY TAXES

Section 7.1. Certificate of Total Initial Equalized Assessed Value. The City will provide to Commercial Real Estate Investors LP, simultaneous with the execution of this Agreement, a true, correct and complete copy of the calculation by the County Clerk of The County of St. Clair, Illinois, of the Total Initial Equalized Assessed Value of all taxable property within the Redevelopment Project Area, determined pursuant to the TIF Act, which calculation shall include a separate calculation of the Total Initial Equalized Assessed Value of Commercial Real Estate Investors LP's Parcel upon which the Commercial Real Estate Investors LP Improvements are to be constructed.

Section 7.2 Special Tax Allocation Fund.

(a) Establishment of the Special Tax Allocation Fund and Other Funds and Accounts. The City hereby agrees to cause its Treasurer to establish and maintain funds in a City of O'Fallon, Illinois Special Tax Allocation Fund ("Special Tax Allocation Fund") as well as a Commercial Real Estate Investors LP's Subaccount and any other accounts or subaccounts as required by the TIF Ordinance and this Agreement.

The Special Tax Allocation Fund shall be maintained by the City as a separate and distinct trust and the moneys therein shall be held, managed, invested, disbursed, and administered by the City. Except for the amounts of Incremental Property Taxes to be distributed pursuant to any Intergovernmental Agreement and/or applied by the City in accordance with the Redevelopment Plan, all moneys deposited in the Special Tax Allocation Fund shall be used solely for the purposes set forth in the applicable Approving Ordinance and as provided herein. The City's Treasurer shall keep and maintain adequate records pertaining to the Special Allocation Fund and any accounts required by the TIF Ordinance and all disbursements therefrom.

(b) Deposits into the Special Tax Allocation Fund. All TIF Revenues generated from Commercial Real Estate Investors LP's Parcel and any taxes, fees, or assessments subsequently enacted and imposed in substitution therefor and allocable to such accounts to the extent authorized by law shall be deposited into the Special Tax Allocation Fund as soon as they become available; provided, however, that Commercial Real Estate Investors LP's Reimbursable Development Project Costs are limited to fifty percent (50%) of the TIF Revenues generated from the Commercial Real Estate Investors LP Parcel. The City agrees to apply any and all interest earnings from moneys on deposit in the Special Tax Allocation Fund to be applied as provided in **Section 7.3** of this Agreement.

Except for the amounts of the Incremental Property Taxes to be distributed pursuant to any Intergovernmental Agreement (which shall not exceed fifty percent [50%] of the Incremental Property Taxes) and/or applied by the City in accordance with the Redevelopment Plan, the City agrees that during the Agreement Term, the City shall not further encumber or pledge, on a superior or parity lien basis, any portion of the Incremental Property Taxes to be deposited in or on deposit in and to the credit of the Special Tax Allocation Fund or take any action inconsistent with the terms and intent of this Agreement.

Section 7.3. Application of Incremental Property Taxes. The City hereby agrees to apply fifty percent (50%) of all Incremental Property Taxes generated from the Commercial Real Estate Investors LP Parcel as provided in this Agreement as follows:

(a) first, transfer to Commercial Real Estate Investors LP an amount sufficient to pay the outstanding amount due to Commercial Real Estate Investors LP for all Reimbursable Commercial Real Estate Investors LP's Development Project Costs and Commercial Real Estate Investors LP Improvements, up to but not to exceed Commercial Real Estate Investors LP's Development Project Costs identified in Exhibit G; and

(b) second, transfer any remaining amount to the City for application in accordance with this Agreement.

Section 7.4. Cooperation in Determining Incremental Property Taxes. The City and Commercial Real Estate Investors LP (or its successors in interest as owner or owners of any portion of Commercial Real Estate Investors LP's Parcel) agree to cooperate and take all reasonable actions necessary to cause the Incremental Property Taxes to be paid into the fund and accounts pursuant to this Agreement, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

ARTICLE EIGHT

GENERAL PROVISIONS

Section 8.1. Successors and Assigns.

(a) **Agreement Binding on Successors.** This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

(b) **Assignment.** Until Substantial Completion of the Commercial Real Estate Investors LP Improvements, the rights, duties and obligations of Commercial Real Estate Investors LP under this Agreement may not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed and shall be given upon a reasonable demonstration by Commercial Real Estate Investors LP of the proposed assignee's experience and financial capability to undertake and complete such portions of the Work or any component thereof proposed to be assigned, all in accordance with this Agreement; provided, however, nothing herein shall prevent Commercial Real Estate Investors LP from entering into retail leases with respect to the retail center to be constructed on the Commercial Real Estate Investors LP Parcel allowing such retail tenants to perform tenant improvement work prior to Substantial Completion of the Commercial Real Estate Investors LP Improvements. All or any part of Commercial Real Estate Investors LP's Parcel or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time following Substantial Completion of the Commercial Real Estate Investors LP Improvements, and the rights of Commercial Real Estate Investors LP named herein or any successors in interest under this Agreement or any part hereof may be assigned. Upon Commercial Real Estate Investors LP's transfer or conveyance of any part of or interest in Commercial Real Estate Investors LP's Parcel or assignment of any interest under this Agreement, as authorized by and pursuant to the provisions of this subparagraph, Commercial Real Estate Investors LP shall be released from further obligation under this Agreement with respect to such Redevelopment Project Area interest conveyed or rights assigned and such Redevelopment Project Area interest conveyed shall be released from further obligation under this Agreement.

(c) **City Consent to Assignment.** Notwithstanding any provision herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with, (a) the right

of Commercial Real Estate Investors LP to encumber or collaterally assign its interest in Commercial Real Estate Investors LP's Parcel or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of Commercial Real Estate Investors LP's Development 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; and (b) the right of Commercial Real Estate Investors LP to assign Commercial Real Estate Investors LP's rights, duties and obligations under this Agreement to a Related Party or among entities comprising Commercial Real Estate Investors LP. Notwithstanding any provision hereof to the contrary, the City hereby approves, and no prior consent shall be required in connection with Commercial Real Estate Investors LP's sale or lease of individual portions of Commercial Real Estate Investors LP's Parcel or subdivided lots in the course of the development of Commercial Real Estate Investors LP's Development Project and any Redevelopment Project Area interest conveyed shall be released from further obligation under this Agreement.

Section 8.2. Remedies. Except as otherwise provided in this Agreement and subject to Commercial Real Estate Investors LP's and the City's respective rights of termination hereof as set forth in **Sections 10.2 and 10.3**, in the event of any default in or breach of any term or condition of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party (or successor), proceed immediately to cure or remedy such default or breach, and, shall, in any event, within sixty (60) days after receipt of notice, commence to cure or remedy such default. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, provided that such legal proceedings shall only affect property as to which such default or breach exists and shall not affect any other rights established in connection with this Agreement or any other property in Commercial Real Estate Investors LP's Parcel which has been or is being developed or used in accordance with the provisions of this Agreement.

Section 8.3. Force Majeure and Other Extensions of Time for Performance.

(a) **Force Majeure.** Neither the City nor Commercial Real Estate Investors LP nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay in Commercial Real Estate Investors LP's construction of any phase of Commercial Real Estate Investors LP's Development Project caused by force majeure, including, without limitation, for purposes of this Agreement, legal proceedings which restrict or impair the orderly development of any phase of Commercial Real Estate Investors LP's Development Project (including, but not limited to, condemnation or eminent domain proceedings), orders of any kind of any court or governmental body which restrict or impair the orderly development of any phase of Commercial Real Estate Investors LP's Development Project, strikes, lockouts, labor disputes, labor shortages, riots, acts of God, epidemics, landslides, lightning, earthquake, fire or other casualties, breakage, explosions, storms, washouts, droughts, tornadoes, cyclones, floods, adverse weather conditions, unusually wet soil conditions, mine subsidence, war, invasion or acts of a public enemy, serious accidents, arrests, failure of utilities, governmental restrictions or priorities, failure to timely process or issue any permits and/or legal authorization by necessary governmental entity, including Governmental Approvals, failure of utilities to timely extend service to the site, shortage or delay in shipment of material or fuel, any actual or threatened litigation relating to the validity of this Agreement, the designation of Commercial Real Estate Investors LP's Parcel, the Redevelopment Plan, Commercial Real Estate Investors LP's Development Project, the adoption of tax increment financing under the TIF Act within Commercial Real Estate Investors LP's Parcel, the City's use and pledge of the Incremental Property Taxes pursuant to this Agreement, or any of the ordinances approving the same, or other causes beyond the responsible party's reasonable control.

The party claiming any extension caused by force majeure shall have the burden of proof in establishing such cause.

(b) Extension of Time for Performance. In addition to the foregoing, periods provided herein for commencement or Substantial Completion of any phase of the Commercial Real Estate Investors LP Improvements shall be automatically extended for periods of delay in obtaining required planning approvals with respect to Commercial Real Estate Investors LP's Parcel or Governmental Approvals, and may also be extended, for reasonable cause, from time to time, upon application of Commercial Real Estate Investors LP to the City Council and upon finding by the City Council that the requested delay is reasonably justified, does not materially affect the ultimate completion of the phase of the Commercial Real Estate Investors LP Improvements.

Section 8.4. Actions Contesting the Validity and Enforceability of the Development Plan, the Agreement and Related Matters. If a third party brings an action against the City or the City's officials, agents, employees or representatives contesting the validity or legality of Commercial Real Estate Investors LP's Parcel, any portion thereof, this Agreement, the designation of Commercial Real Estate Investors LP's Parcel, the Redevelopment Plan, Commercial Real Estate Investors LP's Development Project, the adoption of tax increment financing under the TIF Act within Commercial Real Estate Investors LP's Parcel, the City's use and pledge of the Incremental Property Taxes pursuant to this Agreement, or any of the ordinances approving the same, the City shall promptly, and in any event prior to filing any responsive pleadings, notify Commercial Real Estate Investors LP in writing of such claim or action. Commercial Real Estate Investors LP may, at its option, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which Commercial Real Estate Investors LP has assumed the defense and as to which Commercial Real Estate Investors LP will pay the costs and amounts of any such settlement or compromise) with counsel of Commercial Real Estate Investors LP's choosing, and the parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and Commercial Real Estate Investors LP in any such proceeding. Subject to the provisions of the TIF Act and this Agreement, all costs incurred by Commercial Real Estate Investors LP and the City, as authorized by the Redevelopment Plan and this Redevelopment Agreement, shall be deemed to be Reimbursable Commercial Real Estate Investors LP's Development Project Costs and reimbursable from moneys in the Special Tax Allocation Fund, subject to **Article VI and Article VII** hereof. In the event Commercial Real Estate Investors LP does not elect to assume the defense of such claim or action, the City shall undertake such defense, shall copy Commercial Real Estate Investors LP and its counsel on all correspondence relating to any such action, shall consult with Commercial Real Estate Investors LP and its counsel throughout the course of any such action, and shall not settle or compromise any claim or action without Commercial Real Estate Investors LP's prior written consent.

Section 8.5. Insurance. Prior to the commencement of construction of any buildings that are part of Commercial Real Estate Investors LP Improvements, Commercial Real Estate Investors LP shall obtain or shall ensure that Commercial Real Estate Investors LP obtains workers' compensation and comprehensive general liability insurance coverage in amounts customary in the industry for similar type projects; provided, the City shall not be named as an "additional insured" with respect to any insurance policies and shall not have any rights or claims under any such insurance policies.

Section 8.6. Notice. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally, or if deposited with a nationally recognized overnight courier service prepaid and specifying the overnight delivery and addressed to the party at its address as provided herein:

If to City: City Clerk
City of O'Fallon
255 South Lincoln
O'Fallon, Illinois 62269

And: Dale M. Funk
City Attorney
807 West Highway 50, Suite 1
O'Fallon, Illinois 62269

If to Darrell Shelton
Commercial Real Estate Investors LP
1331 Park Plaza Drive, Suite 4
O'Fallon, IL 62269

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

Section 8.7. Conflict of Interest. No member of the Corporate Authorities, the Joint Review Board, or any branch of the City's government who has any power of review or approval of any of Commercial Real Estate Investors LP's undertakings, or of the City's contracting for goods or services for Commercial Real Estate Investors LP's Parcel, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. As provided in the TIF Act, any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Council the nature of such interest and seek a determination by the City Council with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

Section 8.8. Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of the State of Illinois for all purposes and intents.

Section 8.9. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized representatives of both parties.

Section 8.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 8.11. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 8.12. Representatives Not Personally Liable. No official, agent, employee, City Attorney, or representative of the City (the "City Representatives") shall be personally liable to Commercial Real Estate Investors LP, and no shareholder, director, officer, agent, employee, consultant or representative of Commercial Real Estate Investors LP shall be personally liable to the City or the City

Representatives in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party under the terms of this Agreement.

Section 8.13. Recordation of Agreement. The parties agree to record a memorandum of this Agreement with the St. Clair County Recorder of Deeds. The City shall pay the recording fees for same.

Section 8.14. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the City and Commercial Real Estate Investors LP, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or Commercial Real Estate Investors LP, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or Commercial Real Estate Investors LP. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 8.15. No Joint Venture, Agency or Partnership. Nothing in this Agreement, or any actions of the parties to this Agreement, shall be construed by the parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

Section 8.16. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

ARTICLE NINE

RELEASE AND INDEMNIFICATION

Section 9.1. City. The City and its governing body members, officers, agents and employees and the City Attorney shall not be liable to Commercial Real Estate Investors LP for damages or otherwise in the event that all or any part of the TIF Act, the Redevelopment Plan, Commercial Real Estate Investors LP's Development Project or this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or Commercial Real Estate Investors LP is prevented from enjoying the rights and privileges herein; provided that nothing in this paragraph shall limit: (i) Claims by Commercial Real Estate Investors LP to Incremental Property Taxes pledged to payment of Reimbursable Commercial Real Estate Investors LP's Development Project Costs pursuant to this Agreement, or (ii) Actions by Commercial Real Estate Investors LP seeking specific performance of this Agreement, other relevant contracts, or of zoning or planning approvals or Governmental Approvals issued by the City.

All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, servants or employees in their individual capacities. No elected or appointed official, employee or representative of the City shall be personally liable to Commercial Real Estate Investors LP in the event of a default or breach by any party under this Agreement.

The City releases from, and covenants and agrees that Commercial Real Estate Investors LP, its members, officers, agents, and employees shall not be liable for any and all claims, suits, damages, expenses or liabilities arising out of (1) the acquisition of the portion of Commercial Real Estate Investors LP's Parcel owned by Commercial Real Estate Investors LP, (2) the operation of all or any part of Commercial Real Estate Investors LP's Parcel, or the condition of Commercial Real Estate Investors LP's Parcel, including, without limitation, any environmental cost or liability, (3) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of the City or its agents in connection with or relating to Commercial Real Estate Investors LP's Development Project or Commercial Real Estate Investors LP's Parcel, except for matters arising out of the negligence or malfeasance, misfeasance or nonfeasance of Commercial Real Estate Investors LP or any official, agent, employee, consultant, contractor or representative of Commercial Real Estate Investors LP.

Section 9.2. Commercial Real Estate Investors LP. Commercial Real Estate Investors LP releases from, and covenants and agrees that the City and its governing body members, officers, agents, and employees and the City Attorney shall not be liable for any and all claims, suits, damages, expenses or liabilities arising out of (1) the acquisition of the portion of Commercial Real Estate Investors LP's Parcel owned by Commercial Real Estate Investors LP, (2) the operation of all or any part of Commercial Real Estate Investors LP's Parcel, or the condition of Commercial Real Estate Investors LP's Parcel, including, without limitation, any environmental cost or liability, (3) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of Commercial Real Estate Investors LP or its agents in connection with or relating to Commercial Real Estate Investors LP's Development Project or Commercial Real Estate Investors LP's Parcel, and (4) any loss or damage to Commercial Real Estate Investors LP's Parcel or any injury to or death of any person occurring at or about or resulting from any defect in the performance of the Commercial Real Estate Investors LP Improvements, except for matters arising out of the negligence or malfeasance, misfeasance or nonfeasance of the City or any official, agent, employee, consultant, contractor or representative of the City.

ARTICLE TEN

TERM

Section 10.1. Term of Agreement. This Agreement, and all of the rights and obligations of the parties hereunder, shall terminate on expiration of the Agreement Term; provided that this Agreement may terminate sooner upon the earlier of the delivery of a written notice by Commercial Real Estate Investors LP or the City (and recordation of a copy of such notice with the St. Clair County Recorder) that this Agreement has been terminated pursuant to **Section 10.2, 10.3 or 10.4** hereof.

Section 10.2. Commercial Real Estate Investors LP's Right of Termination. Commercial Real Estate Investors LP has the right to terminate this Agreement at any time upon not less than sixty (60) days written notice to the City.

Section 10.3. City's Right of Termination. The City may only terminate this Agreement if Commercial Real Estate Investors LP fails to satisfy the provisions of **Section 5.1(a)** within the times specified therein and on such termination all rights and obligations of Commercial Real Estate Investors LP and the City hereunder shall terminate.

Section 10.4. Cancellation. In the event Commercial Real Estate Investors LP or the City shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the

rights and privileges herein contained, or contained in the Redevelopment Plan, including Commercial Real Estate Investors LP's duty to construct Commercial Real Estate Investors LP Improvements, by the order of any court of competent jurisdiction, or in the event that all or any part of the TIF Act or any ordinance or resolution adopted by the City in connection with Commercial Real Estate Investors LP's Development Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or the covenants and agreements or rights and privileges of Commercial Real Estate Investors LP or the City, then and in any such event, the party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of Commercial Real Estate Investors LP's Development Project materially affected) by giving written notice thereof to the other within thirty (30) days after such final decision or amendment. If the City terminates this Agreement pursuant to this **Section 10.4**, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Commercial Real Estate Investors LP for buildings permitted and under construction to the extent permitted by said court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.

Section 10.5. Obligations Remain Outstanding. On termination of this Agreement pursuant to **Sections 10.2, 10.3 or 10.4**, all outstanding obligations of the City to reimburse Commercial Real Estate Investors LP from Incremental Property Taxes, and its outstanding Commercial Real Estate Investors LP TIF Note, as the case may be, shall remain outstanding. If Commercial Real Estate Investors LP has submitted to the City, within 60 days after the termination of this Agreement pursuant to this section, a Certificate of Reimbursable Commercial Real Estate Investors LP's Development Project Costs, but the City has not yet approved such certificate, the City shall review and process such certificates in accordance with **Section 5.5** hereof.

ARTICLE ELEVEN

REPRESENTATIONS OF THE PARTIES

Section 11.1. Representations of the City. The City hereby represents and warrants that (a) the City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver this Agreement and to perform all terms and obligations of this Agreement, and (b) this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 11.2. Representations of Commercial Real Estate Investors LP. Commercial Real Estate Investors LP hereby represents and warrants that (a) Commercial Real Estate Investors LP has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings, (b) this Agreement constitutes the legal, valid and binding obligation of Commercial Real Estate Investors LP, enforceable in accordance with its terms.

ARTICLE TWELVE

EFFECTIVENESS

The Effective Date for this Agreement shall be the day on which this Agreement is approved by the City, with said date being inserted on page 1 hereof.

IN WITNESS WHEREOF, the City and Commercial Real Estate Investors LP have caused this Agreement to be executed in their respective names and caused their respective seals to be affixed thereto, and attested as to the date first above written.

(SEAL)

CITY OF O’FALLON, ILLINOIS

By: _____
Name: _____
Title: Mayor

Attest:

By: _____
Name: _____
Title: City Clerk

Approved as to Form:

By: _____
Name: _____
Title: City Attorney

COMMERCIAL REAL ESTATE INVESTORS LP,

By: _____

Name: _____

Title: _____

STATE OF _____)
)
COUNTY OF ST. CLAIR)

On this ____ day of _____, 2014, before me appeared _____, to me personally known, who being, by me duly sworn, did say that he is the _____ of Commercial Real Estate Investors LP, a limited liability partnership in the state of Illinois, and that the foregoing instrument was signed on behalf of said partnership, and he further acknowledged said instrument to be the free act and deed of said partnership.

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

My Commission expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT AREA

1213 TIF-1

A TRACT OF LAND BEING A PART OF LOT 22D OF CENTRAL PARK PLAZA 2ND ADDITION, 2ND AMENDMENT AS RECORDED IN DOCUMENT A02005516, ALL OF LOTS 22B AND 22C OF CENTRAL PARK PLAZA 2ND ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 104 PAGE 61, DOCUMENT A01354886, ALL OF LOT 24 OF MINOR SUBDIVISION OF LOT 24 OF CENTRAL PARK PLAZA 3RD ADDITION AS RECORDED IN PLAT BOOK 103 PAGE 59, DOCUMENT A01807519, ALL OF OUTLOT 1 OF CENTRAL PARK PLAZA 2ND ADDITION AS RECORDED IN PLAT BOOK 95 PAGE 5, DOCUMENT A01379449, ALL OF LOTS 26, 28 AND 30 OF CENTRAL PARK PLAZA 4TH ADDITION AS RECORDED IN PLAT BOOK 97 PAGE 75, DOCUMENT A01500041, ALL OF OUTLOT 2 OF CENTRAL PARK PLAZA 3RD ADDITION AS RECORDED IN PLAT BOOK 97 PAGE 38, DOCUMENT A01475405, ALL OF LOT 1 OF THE RESUBDIVISION OF LOT 2 OF PARKWAY LAKESIDE APARTMENT HOMES AS RECORDED IN DOCUMENT A02227637, ALL OF LOT 1 OF PARKWAY LAKESIDE APARTMENT HOMES AS RECORDED IN DOCUMENT A02206495, SAID TRACT BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 25 AND THE NORTHWEST, NORTHEAST AND SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 30 OF CENTRAL PARK PLAZA 4TH ADDITION; THENCE ALONG THE WEST LINE OF NORTH GREENMOUNT ROAD, SOUTH 02 DEGREES 46 MINUTES 45 SECONDS EAST FOR A DISTANCE OF 285.46 FEET; THENCE LEAVING SAID WEST LINE, SOUTH 89 DEGREES 39 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 241.18 FEET; THENCE SOUTH 00 DEGREES 23 MINUTES 07 SECONDS WEST FOR A DISTANCE OF 374.09 FEET TO THE NORTH LINE OF FRANK SCOTT PARKWAY; THENCE NORTH 84 DEGREES 16 MINUTES 40 SECONDS WEST FOR A DISTANCE OF 136.57 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 328.10 FEET; THENCE SOUTH 86 DEGREES 00 MINUTES 19 SECONDS WEST FOR A DISTANCE OF 164.57 FEET; THENCE NORTH 85 DEGREES 45 MINUTES 32 SECONDS WEST FOR A DISTANCE OF 256.68 FEET; THENCE LEAVING SAID NORTH LINE OF FRANK SCOTT PARKWAY, NORTH 14 DEGREES 47 MINUTES 21 SECONDS EAST FOR A DISTANCE OF 588.73 FEET; THENCE NORTH 51 DEGREES 11 MINUTES 37 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 26 OF CENTRAL PARK PLAZA 4TH ADDITION FOR A DISTANCE OF 740.74 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 1 OF THE RESUBDIVISION OF LOT 2 OF PARKWAY LAKESIDE APARTMENT HOMES; THENCE LEAVING SAID SOUTHWESTERLY LINE, SOUTH 35 DEGREES 44 MINUTES 56 SECONDS WEST FOR A DISTANCE OF 12.52 FEET; THENCE NORTH 51 DEGREES 11 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 461.74 FEET; THENCE

NORTH 70 DEGREES 47 MINUTES 53 SECONDS WEST FOR A DISTANCE OF 166.69 FEET; THENCE NORTH 89 DEGREES 52 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 365.62 FEET; THENCE SOUTH 22 DEGREES 52 MINUTES 05 SECONDS WEST FOR A DISTANCE OF 35.93 FEET; THENCE SOUTH 07 DEGREES 29 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 45.01 FEET; THENCE SOUTH 30 DEGREES 53 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 180.71 FEET; THENCE SOUTH 36 DEGREES 52 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 33.94 FEET; THENCE SOUTH 38 DEGREES 27 MINUTES 35 SECONDS WEST FOR A DISTANCE OF 222.44 FEET; THENCE SOUTH 02 DEGREES 22 MINUTES 02 SECONDS WEST FOR A DISTANCE OF 207.79 FEET; THENCE SOUTH 35 DEGREES 46 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 25.71 FEET; THENCE SOUTH 07 DEGREES 32 MINUTES 09 SECONDS WEST FOR A DISTANCE OF 360.70 FEET; THENCE SOUTH 12 DEGREES 23 MINUTES 54 SECONDS EAST FOR A DISTANCE OF 7.06 FEET; THENCE SOUTH 49 DEGREES 44 MINUTES 30 SECONDS EAST FOR A DISTANCE OF 22.19 FEET; THENCE SOUTH 20 DEGREES 58 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 6.85 FEET TO THE NORTH LINE OF SAID LOT 1 OF PARKWAY LAKESIDE APARTMENT HOMES; THENCE SOUTH 89 DEGREES 58 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 563.81 FEET; THENCE SOUTH 03 DEGREES 54 MINUTES 16 SECONDS EAST FOR A DISTANCE OF 47.80 FEET; THENCE SOUTH 01 DEGREES 23 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 298.05 FEET TO THE NORTH LINE OF SAID FRANK SCOTT PARKWAY; THENCE NORTH 88 DEGREES 36 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 119.42 FEET; THENCE NORTH 88 DEGREES 29 MINUTES 34 SECONDS WEST FOR A DISTANCE OF 291.04 FEET; THENCE NORTH 80 DEGREES 50 MINUTES 02 SECONDS WEST FOR A DISTANCE OF 120.20 FEET; THENCE NORTH 85 DEGREES 29 MINUTES 44 SECONDS WEST FOR A DISTANCE OF 179.99 FEET; THENCE LEAVING SAID NORTH LINE OF FRANK SCOTT PARKWAY, NORTH 00 DEGREES 07 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 2127.64 FEET TO THE WESTERLY LINE OF SAID LOT 24 OF THE MINOR SUBDIVISION PLAT OF LOT 24 OF CENTRAL PARK PLAZA 3RD ADDITION ; THENCE LEAVING SAID WESTERLY LINE, NORTH 35 DEGREES 51 MINUTES 04 SECONDS WEST FOR A DISTANCE OF 493.59 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 107.57 FEET TO SAID WESTERLY LINE OF SAID LOT 24 ; THENCE NORTH 30 DEGREES 18 MINUTES 33 SECONDS WEST ALONG SAID WESTERLY LINE FOR A DISTANCE OF 540.97 FEET TO THE SOUTHEAST CORNER OF SAID OUTLOT 1 OF CENTRAL PARK PLAZA 2ND ADDITION; THENCE SOUTH 87 DEGREES 57 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 125.00 FEET; THENCE NORTH 02 DEGREES 02 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 100.00 FEET; THENCE NORTH 46 DEGREES 35 MINUTES 36 SECONDS WEST FOR A DISTANCE OF 501.21 FEET; THENCE NORTH 00 DEGREES 06 MINUTES 23 SECONDS EAST FOR A DISTANCE OF 1165.24 FEET TO THE SOUTHEAST CORNER OF DP GOLF CENTER INCORPORATED AS RECORDED IN DEED BOOK 2815 PAGE 2227; THENCE NORTH 89 DEGREES 42 MINUTES 27

SECONDS WEST FOR A DISTANCE OF 1240.97 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 29 SECONDS EAST FOR A DISTANCE OF 138.43 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 400.04 FEET TO THE SOUTHWEST CORNER OF SAID DP GOLF CENTER INCORPORATED; THENCE NORTH 00 DEGREES 31 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 700.07 FEET TO THE NORTHWEST CORNER OF SAID DP GOLF CENTER INCORPORATED; THENCE SOUTH 89 DEGREES 42 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 1644.03 FEET TO THE NORTHEAST CORNER OF SAID DP GOLF CENTER INCORPORATED; THENCE SOUTH 00 DEGREES 06 MINUTES 23 SECONDS WEST FOR A DISTANCE OF 275.84 FEET TO THE NORTHWEST CORNER OF SAID LOT 22 D OF CENTRAL PARK 2ND ADDITION, 2ND AMENDMENT; THENCE SOUTH 89 DEGREES 26 MINUTES 43 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 22 D FOR A DISTANCE OF 403.88 FEET TO THE WEST LINE OF CENTRAL PARK (60.00 FEET WIDE) DRIVE; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1030.00 FEET, AN ARC LENGTH OF 160.85 FEET AND A CHORD BEARING OF SOUTH 13 DEGREES 56 MINUTES 04 SECONDS EAST FOR A DISTANCE OF 160.69 FEET TO THE SOUTHEAST CORNER OF SAID LOT 22D, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 22B OF CENTRAL PARK PLAZA 2ND ADDITION, 1ST AMENDMENT; THENCE SOUTHEASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1030.00 FEET, AN ARC LENGTH OF 213.94 FEET; THENCE SOUTH 30 DEGREES 18 MINUTES 33 SECONDS EAST FOR A DISTANCE OF 1036.68 FEET TO THE SOUTHEAST CORNER OF SAID LOT 22C OF CENTRAL PARK PLAZA 2ND ADDITION, 1ST AMENDMENT, ALSO BEING THE NORTHEAST CORNER OF SAID LOT 24 OF MINOR SUBDIVISION OF LOT 24 OF CENTRAL PARK PLAZA 3RD ADDITION; THENCE SOUTH 30 DEGREES 18 MINUTES 33 SECONDS EAST FOR A DISTANCE OF 1500.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24; THENCE LEAVING SAID CENTRAL PARK DRIVE, SOUTH 59 DEGREES 41 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 822.22 FEET; THENCE SOUTH 32 DEGREES 51 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 662.08 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 31 SECONDS EAST FOR A DISTANCE OF 55.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 26 OF CENTRAL PARK PLAZA 4TH ADDITION; THENCE NORTH 46 DEGREES 32 MINUTES 58 SECONDS EAST FOR A DISTANCE OF 820.00 FEET TO THE SOUTHWESTERLY LINE OF SAID CENTRAL PARK DRIVE; THENCE SOUTH 43 DEGREES 27 MINUTES 02 SECONDS EAST FOR A DISTANCE OF 400.00 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 3244.00 FEET, AN ARC LENGTH OF 547.44 FEET AND A CHORD BEARING OF SOUTH 38 DEGREES 36 MINUTES 57 SECONDS EAST FOR A DISTANCE OF 546.79 FEET; THENCE SOUTH 33 DEGREES 46 MINUTES 53 SECONDS EAST FOR A DISTANCE OF 462.83 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET, AN ARC LENGTH OF 204.03 FEET AND A CHORD BEARING OF SOUTH 47 DEGREES 22

MINUTES 28 SECONDS EAST FOR A DISTANCE OF 202.12 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET, AN ARC LENGTH OF 139.75 FEET AND A CHORD BEARING OF SOUTH 67 DEGREES 30 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 139.13 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET, AN ARC LENGTH OF 78.03 FEET AND A CHORD BEARING OF SOUTH 82 DEGREES 01 MINUTES 28 SECONDS EAST FOR A DISTANCE OF 77.92 FEET; THENCE SOUTH 89 DEGREES 36 MINUTES 56 SECONDS EAST FOR A DISTANCE OF 148.16 FEET TO THE POINT OF BEGINNING, ENCOMPASSING AN AREA OF 128.00 ACRES MORE OR LESS.

1213 TIF-2

A TRACT OF LAND BEING ALL OF LOTS 23A AND 23B OF CENTRAL PARK PLAZA 3RD ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 104 PAGE 66, DOCUMENT A01 856670, A SUBDIVISION BEING A PART OF THE NORTHWEST, NORTHEAST AND SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 23A, LOCATED ON THE NORTHEASTERLY LINE OF CENTRAL PARK (60.00 FEET WIDE) DRIVE; THENCE NORTH 59 DEGREES 41 MINUTES 27 SECONDS EAST ALONG THE NORTHWESTERLY LINES OF SAID LOT 23A AND 23B FOR A DISTANCE OF 472.95 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 23B; THENCE SOUTH 37 DEGREES 32 MINUTES 33 SECONDS EAST ALONG SAID NORTHEASTERLY LINE FOR A DISTANCE OF 250.74 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 52 DEGREES 32 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 168.82 FEET; THENCE SOUTH 18 DEGREES 23 MINUTES 50 SECONDS WEST FOR A DISTANCE OF 79.17 FEET TO THE NORTHWESTERLY LINE OF CENTRAL PARK (50.00 FEET WIDE) CIRCLE; THENCE IN A NORTH WESTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 90.00 FEET, FOR AN ARC LENGTH OF 76.51 FEET TO THE COMMON CORNER OF SAID LOT 23A AND 23B; THENCE SOUTH 59 DEGREES 41 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 197.91 FEET; THENCE NORTH 75 DEGREES 18 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 16.97 FEET TO THE NORTHEASTERLY LINE OF SAID CENTRAL PARK DRIVE; THENCE NORTH 30 DEGREES 18 MINUTES 33 SECONDS WEST ALONG SAID NORTHEASTERLY LINE FOR A DISTANCE OF 279.38 FEET TO THE POINT OF BEGINNING , ENCOMPASSING AN AREA OF 3.18 ACRES.

1213 TIF-3

A TRACT OF LAND BEING ALL OF LOT 23D OF CENTRAL PARK PLAZA 3RD ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 104 PAGE 66, DOCUMENT A01856670, A SUBDIVISION BEING A PART OF THE NORTHWEST, NORTHEAST AND SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CENTRAL PARK (50.00 FEET WIDE) CIRCLE WITH THE NORTHEASTERLY LINE OF CENTRAL PARK (60.00 FEET WIDE) DRIVE; THENCE ALONG SAID CENTRAL PARK CIRCLE THE FOLLOWING COURSES, NORTH 14 DEGREES 41 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 16.97 FEET; THENCE NORTH 59 DEGREES 41 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 197.91 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET, FOR AN ARC LENGTH DISTANCE OF 57.84 FEET; THENCE SOUTH 37 DEGREES 27 MINUTES 12 SECONDS EAST FOR A DISTANCE OF 138.07 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00, FOR AN ARC LENGTH DISTANCE OF 63.54 FEET; THENCE SOUTH 53 DEGREES 33 MINUTES 47 SECONDS WEST FOR A DISTANCE OF 214.09 FEET; THENCE NORTH 80 DEGREES 37 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 16.72 FEET TO THE SAID NORTHEASTERLY LINE OF CENTRAL PARK DRIVE; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1970.00, FOR AN ARC LENGTH OF 148.69 FEET; THENCE NORTH 30 DEGREES 18 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 68.40 FEET TO THE POINT OF BEGINNING, ENCOMPASSING AN AREA OF 1.33 ACRES.

1213 TIF-4

A TRACT OF LAND BEING A PART OF LOTS 25C AND 25D OF CENTRAL PARK PLAZA 4TH ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 104 PAGE 9, DOCUMENT A01830816, A SUBDIVISION BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID LOT 25C LOCATED ON THE NORTHEASTERLY LINE OF CENTRAL PARK (60.00 FEET WIDE) DRIVE; THENCE NORTH 46 DEGREES 29 MINUTES 08 SECONDS EAST ALONG THE NORTHWESTERLY LINE OF SAID LOT 25C FOR A DISTANCE OF 434.46 FEET; THENCE SOUTH 09 DEGREES 48 MINUTES 12 SECOND EAST FOR A DISTANCE OF 163.04 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 711.94 FEET, AN ARC LENGTH OF 392.26 FEET AND A CHORD BEARING OF SOUTH 28 DEGREES 00 MINUTES 15 SECONDS EAST FOR A DISTANCE OF 387.32 FEET; THENCE SOUTH 44 DEGREES 04 MINUTES 16 SECONDS EAST FOR A DISTANCE OF 102.37 FEET; THENCE SOUTH 61 DEGREES 12 MINUTES 36 SECONDS EAST FOR A DISTANCE OF 19.78 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 25 D; THENCE SOUTH 46 DEGREES 29 MINUTES 08 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE FOR A DISTANCE OF 316.35 FEET TO THE SAID NORTHEASTERLY LINE OF CENTRAL PARK DRIVE; THENCE NORTH 33 DEGREES 46 MINUTES 53 SECONDS WEST ALONG SAID NORTHEASTERLY LINE FOR A DISTANCE OF 129.45 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 3,304.00 FEET, FOR AN ARC LENGTH OF 505.10 FEET, ENCOMPASSING AN AREA OF 4.60 ACRES.

A TRACT OF LAND BEING ALL OF LOT 29A OF CENTRAL PARK PLAZA 4TH ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 104 PAGE 9, DOCUMENT A01830816, A SUBDIVISION BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF SAID LOT 29A; THENCE SOUTH 83 DEGREES 52 MINUTES 04 SECOND WEST FOR A DISTANCE OF 132.08 FEET TO THE NORTHEASTERLY LINE OF CENTRAL PARK (VARIABLE WIDTH) DRIVE; THENCE NORTH 89 DEGREES 36 MINUTES 56 SECONDS WEST FOR A DISTANCE OF 9.37 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 370.00 FEET, AN ARC LENGTH OF 72.44 FEET AND A CHORD BEARING OF NORTH 86 DEGREES 54 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 72.32 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 370.00 FEET, AN ARC LENGTH OF 59.18 FEET AND A CHORD BEARING OF NORTH 76 DEGREES 42 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 59.12 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE OF CENTRAL PARK DRIVE, NORTH 00 DEGREES 23 MINUTES 07 SECONDS EAST FOR A DISTANCE OF 297.69 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 245.42 FEET; THENCE SOUTH 03 DEGREES 25 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 25.43 FEET; THENCE SOUTH 05 DEGREES 04 MINUTES 34 SECONDS EAST FOR A DISTANCE OF 276.84 FEET TO THE POINT OF BEGINNING, ENCOMPASSING AN AREA OF 1.84 ACRES.

1213 TIF-6

A TRACT OF LAND BEING ALL OF LOT 10C OF MINOR SUBDIVISION LOT 10 AND OULOT 1 AMENDED PLAT OF CENTRAL PARK PLAZA 1ST ADDITION, 1ST AMENDMENT AS RECORDED IN PLAT BOOK 105 PAGE 8, DOCUMENT A001879246, A SUBDIVISION BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 10C LOCATED ON THE NORTH LINE OF PARK PLAZA (50.00 FEET WIDE) DRIVE; THENCE NORTH 89 DEGREES 22 MINUTES 05 SECONDS WEST ALONG SAID NORTH LINE FOR A DISTANCE OF 193.10 FEET; THENCE LEAVING SAID NORTH LINE, NORTH 37 DEGREES 59 MINUTES 58 SECONDS WEST FOR A DISTANCE OF 12.33 FEET; THENCE NORTH 15 DEGREES 00 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 130.49 FEET; THENCE NORTH 37 DEGREES 48 MINUTES 42 SECONDS EAST FOR A DISTANCE OF 24.17 FEET; THENCE SOUTH 89 DEGREES 22 MINUTES 05 SECONDS EAST FOR A DISTANCE OF 219.13 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 154.56 FEET TO THE POINT OF BEGINNING, ENCOMPASSING AN AREA OF 0.77 ACRES.

1213 TIF-7

A TRACT OF LAND BEING ALL OF LOT 16 AND OUTLOT 2 AMENDED PLAT OF CENTRAL PARK PLAZA 1ST ADDITION, AS RECORDED IN PLAT BOOK 95 PAGE 31, DOCUMENT A0134823, A SUBDIVISION BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 NORTH, RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID OUTLOT 2, LOCATED ON THE SOUTH LINE OF PARK PLAZA (50.00 FEET WIDE) DRIVE; THENCE LEAVING SAID SOUTH LINE, SOUTH 00 DEGREES 11 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 651.88 FEET; THENCE NORTH 89 DEGREES 26 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 110.01 FEET; THENCE NORTH 00 DEGREES 11 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 450.00 FEET; THENCE NORTH 89 DEGREES 26 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 280.20 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 100.00, AN ARC LENGTH OF 90.92 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET, AN ARC LENGTH OF 89.01 FEET; THENCE NORTH 15 DEGREES 00 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 60.00 FEET TO THE SOUTH LINE OF SAID PARK PLAZA DRIVE; THENCE SOUTH 89 DEGREES 22 MINUTES 05 SECONDS EAST ALONG SAID SOUTH LINE FOR A DISTANCE OF 425.93 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 325.00 FEET, AN ARC LENGTH OF 92.56 FEET TO THE POINT OF BEGINNING, ENCOMPASSING AN AREA OF 3.16 ACRES.

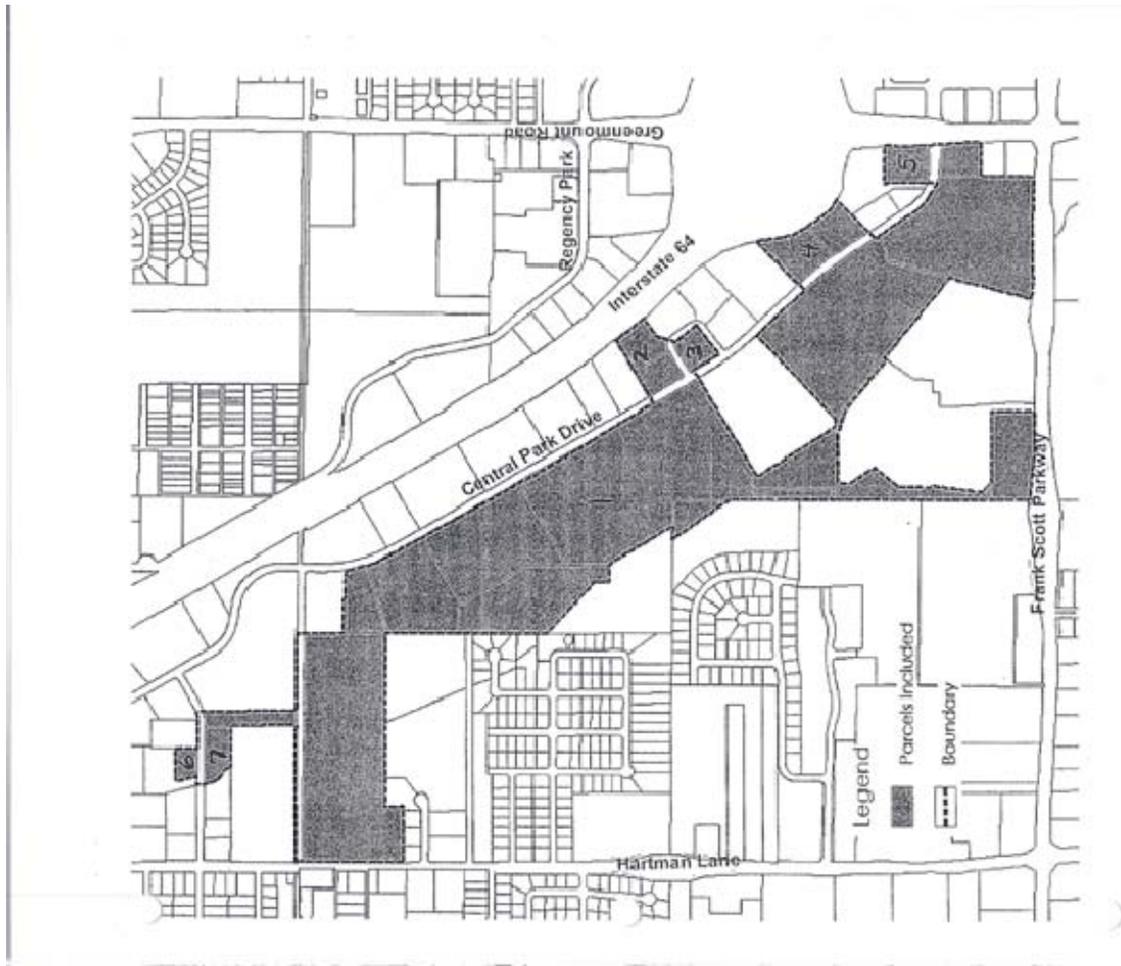


EXHIBIT B

LEGAL DESCRIPTION OF COMMERCIAL REAL ESTATE INVESTORS LP'S PARCEL

Lot 23A

Lot 23A of Central Park Plaza 3rd Addition, 1st Amendment A Resubdivision of Lot 23 of "Central Park Plaza 3rd Addition" and Outlot 1 of "Central Park Plaza 4th Addition, 1st Amendment", Being a Part of the Northwest, Northeast and Southeast Quarter of Section 36, Township 2 North, Range 8 West of the Third Principal Meridian City of O'Fallon, St Clair, Illinois reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats 104 Page 66 as Document NO. A01856670 and containing 1.40 acres

Parcel #03-36.0-201-009

Lot 23B

Lot 23B of Central Park Plaza 3rd Addition, 1st Amendment A Resubdivision of Lot 23 of "Central Park Plaza 3rd Addition" and Outlot 1 of "Central Park Plaza 4th Addition, 1st Amendment", Being a Part of the Northwest, Northeast and Southeast Quarter of Section 36, Township 2 North, Range 8 West of the Third Principal Meridian City of O'Fallon, St Clair, Illinois reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats 104 Page 66 as Document NO. A01856670 and containing 1.78 acres

Parcel #03-36.0-201-010

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Commercial Real Estate Investors LP, Inc., (“**Commercial Real Estate Investors LP**”), pursuant to that certain Redevelopment Agreement dated as of _____, 2014, between the City of O’Fallon, Illinois (the “**City**”) and Commercial Real Estate Investors LP (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, _____, the construction and installation of [a phase of] the Commercial Real Estate Investors LP Improvements in connection with Commercial Real Estate Investors LP’s Development Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.

2. Such Commercial Real Estate Investors LP Improvements have been performed in a workmanlike manner.

3. This Certificate of Substantial Completion is being issued by Commercial Real Estate Investors LP to the City in accordance with the Agreement to evidence Commercial Real Estate Investors LP’s satisfaction of all obligations and covenants with respect to [a phase of] the Commercial Real Estate Investors LP Improvements.

4. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to Commercial Real Estate Investors LP prior to the end of such thirty (30) day period), shall evidence the satisfaction of Commercial Real Estate Investors LP’s agreements and covenants to perform the Work related to Commercial Real Estate Investors LP Improvements.

This Certificate may be recorded in the office of the St. Clair County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

Dated this _____ day of _____, _____.

COMMERCIAL REAL ESTATE INVESTORS LP

By: _____
Name: _____
Title: _____

Accepted by:
CITY OF O’FALLON, ILLINOIS

By: _____
Name: _____
Title: _____

EXHIBIT E

**FORM OF CERTIFICATE OF REIMBURSABLE COMMERCIAL REAL ESTATE INVESTORS LP'S
DEVELOPMENT PROJECT COSTS**

Certificate of Reimbursable Commercial Real Estate Investors LP's Development Project Costs

TO: City of O'Fallon, Illinois
Attention:

Re: City of O'Fallon, Illinois Tax Increment Finance District (Commercial Real Estate Investors LP, Inc.)

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of _____, 2014 (the "Agreement") between the City and Commercial Real Estate Investors LP. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a Reimbursable Development Project Cost and was incurred in connection with the construction of the Commercial Real Estate Investors LP Improvements in connection with Commercial Real Estate Investors LP's Development Project.

2. These Commercial Real Estate Investors LP's Development Project Costs have been have been paid by Commercial Real Estate Investors LP and are reimbursable under the TIF Ordinance and the Agreement.

3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from Incremental Property Taxes and no part thereof has been included in any other certificate previously filed with the City.

4. There has not been filed with or served upon Commercial Real Estate Investors LP 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.

5. All necessary permits and approvals required for the component of the work for which this certificate relates have been issued and are in full force and effect.

6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

Dated this ____ day of _____, ____.

COMMERCIAL REAL ESTATE INVESTORS LP

By: _____
Name: _____
Title: _____

EXHIBIT F

COMMERCIAL REAL ESTATE INVESTORS LP IMPROVEMENTS

The Commercial Real Estate Investors LP Improvements involve the construction of a 61,000 square foot retail center. These improvements, in particular, will be built to accommodate certain retail businesses. Improvements also include, but are not limited to, all necessary support facilities such as:

- (1) utilities, including construction, reconstruction and/or relocation of utilities;
- (2) a parking lot and all parking lot improvements;
- (3) two curb cuts along Central Park Drive and one on Central Park Circle;
- (4) street improvements and landscaping;
- (5) storm water detention and drainage facilities and other infrastructure improvements required by the U.S. Army Corps of Engineers, St. Clair County or any other entity in order to obtain all necessary approvals and permits ; and
- (6) other infrastructure improvements appurtenant thereto, which are necessary to remove the Blighting Factors described within the Redevelopment Plan, including without limitation, environmental remediation and mine remediation to mitigate the risk of subsidence with respect to Commercial Real Estate Investors LP's Parcel as determined is necessary by Commercial Real Estate Investors LP in order for Commercial Real Estate Investors LP to complete the Commercial Real Estate Investors LP Improvements.

Exhibit G
Eligible Development Project Costs

<u>Description</u>	<u>Estimated Cost</u>
1) Property and site preparation, assembly and development costs, land costs, including but not limited to demolition of buildings, site preparation, site improvements that serve as an engineered barrier addressing ground level or below ground environmental contamination, coal mine stabilization remediation and the grading and clearing of land	\$753,100.00
2) Mine Remediation – Studies, reports and mine remediation work	\$ 0.00
3) Site work – Clearing and grading (Earthwork), engineering, legal, construction management, development financing, and cost of the construction of public works or improvements (construction, reconstruction or repair of rights of way, streets, roadways, curbs and gutters, pedestrian walkways and sidewalks, street lighting, landscaping and utilities including sanitary sewer, storm sewers and drainage infrastructure, lift station, water lines and associated water treatment plant components) Water Line Sanitary Sewer Lines, Storm Water and Drainage Infrastructure, Sidewalk and Pedestrian Walkways and Engineering And Agency Fees	\$487,300.00
Total Estimated Eligible Costs	<hr style="width: 100%;"/> \$1,240,400.00



MEMORANDUM

TO: Community Development Committee
FROM: Jeff Stehman, Building and Zoning Supervisor
DATE: October 27, 2014
SUBJECT: Adoption of the 2012 ICC Family of Codes

Summary

The proposed 2012 ICC (International Code Council) Code adoption is a periodic update of the family of codes that the City uses to regulate all construction and administer the Occupancy Permit Program in the City. While we have made periodic amendments and/or deletions of certain sections of particular codes, the last time we updated the codes to a new version was in December 2010 when we adopted the 2006 family of codes. ICC develops new codes every 3 years and each jurisdiction can adopt what year they choose

Current Ordinance: #3691 for 2006 ICC Family of Codes

The previous ordinance adopted the following codes:

2006 International Building Code (IBC)
2006 International Fire Prevention Code (IFC)
2006 International Mechanical Code (IMC)
2009 International Property Maintenance Code (IPMC)
2006 International Residential Code (IRC)
2006 International Existing Building Code (IEBC)
2006 International Fuel Gas Code (IFGC)
2005 National Electric Code (NEC)

There have been changes in the codes since the 2006 code adoption, but none are considered to be major or significant changes, with the exception of the requirement for residential fire sprinklers in new single family homes, which was a requirement that was added to the 2009 IRC. Of course, this is a requirement that we do not support and will not be included as part of the proposed 2012 Code updates. I have attached a memo specifically addressing that issue.

Also attached a list of some of the other changes in the IBC and IRC. As with previous codes, they are constantly evolving through recommended code changes, new technologies and increased safety standards all intended to fulfill the purpose of the codes, which is "to provide minimum requirements to safeguard the public safety, health, and general welfare, through affordability, structural strength, means of egress facilities, stability, sanitation, light, and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment".

This proposed ICC code adoption ordinance is similar to the current ordinance in that certain language changes have been included to make the ordinance and the ICC Code compatible with local and state law. These include, but are not limited to, construction site maintenance issues, definition changes, the appeal process, property maintenance/occupancy permit requirements, violation penalty provisions and organizational issues.

Staff believes it is important that we adopt the 2012 ICC Codes at this time for the following reasons:

- The St. Elizabeth's Hospital Design Team has stated that they would prefer designing their new hospital and medical office buildings to the 2012 IBC and IFC. This is particularly important because this will be an ongoing project that we span several years, and starting with 8 year old codes now and having to change them as new buildings are built could make their project more difficult, as well as more challenging for our staff.
- All training and certifications for our inspection staff are now on the 2009 or 2012 ICC Codes and are no longer available for our current 2006 adopted codes.
- Keeping current with new construction related technologies.
- Insurance Service Office (ISO) Rating requires building codes be within 5 years of the latest code year. There are significant point reductions taken in their grading system when the adopted codes are older than 5 years.

Proposed Code Adoption Ordinance for 2012 Family of Codes

The proposed ordinance will adopt the following:

2012 International Building Code (IBC)
2012 International Fire Prevention Code (IFC)
2012 International Mechanical Code (IMC)
2012 International Property Maintenance Code (IPMC)
2012 International Residential Code (IRC)
2012 International Existing Building Code (IEBC)
2012 International Fuel Gas Code (IFGC)
2012 Illinois Energy Conservation Code
2011 National Electric Code (NEC)

While some of the code changes will require additional features for safer construction, there are other changes, particularly in the IBC, that eases some of those requirements. The code development process takes into consideration history and results of requirements and their intended purpose. It is not uncommon to see easing of requirements that did not prove necessary. This is the case for some of the hospital's design. Another example is the 2012 IRC has changed designations of seismic zones, which will result in less steel reinforcement requirements for footings and foundations.

Staff has met with some of the City's major builders to discuss the update and will continue dialogue with them over the next several weeks regarding the update and any amendments. They have supported the adoption and we have not received negative comments or opposition, with the exception of requirements for SFR sprinklers, which will not be proposed.

Staff Recommendation

Staff will bring forward an ordinance in the next few weeks for adoption of the 2012 ICC Codes as shown above, with local amendments, with a goal of having them adopted by at least Jan 1, 2015.

Attachments:

Code Change List
Residential Fire Sprinklers Memo
Example for addressing residential sprinklers – Bloomington, IL



Some of the ICC Code Changes

IBC

- Dead end corridors extended from 20' to 50' in building with sprinkler systems
- Carbon monoxide detectors required in Use Groups I and R when fossil fuel devices are present
- Changing of seismic zone will reduce the design requirements throughout the entire building
- Bottom of windows in R-2 and R-3 now to 36" up from 24"

IRC

- Seismic Design Category change will not require 3" square washers on sill plates and reduce reinforcement steel in concrete
- Doors between garage and residence will require self-closers
- Smoke alarms can now use wireless technology in lieu of interconnection
- Decks, where supported by the attachment to an exterior wall shall be positively anchored to the primary structure for both vertical and lateral loads. The lateral connection to be accomplished with a hold down tension device in two locations
- Fire protection of floors – ½ inch drywall, 5/8 plywood or OSB or equivalent to be installed on underside of the floor framing member:
 - Exceptions, sprinkled area below floor, wood floor joists using dimensional lumber equal to or greater than 2x10 or other approved floor assembly demonstrating equivalent fire performance
- Changes in window well drainage requirements to go to foundation drain
- Filter material now required for perforated foundation drains
- Now provides for use of single member headers under limited loading
- Simplified prescriptive method of wall line bracing
- Code now requires roof drip edge for asphalt shingles
- Several changes in dryer exhaust duct attaching and bracing

IMC

- Reduces fresh air ventilation requirements

NEC

- All residential receptacles that are not GFCI or dedicated appliance circuits will have to be Arc Fault receptacles
- Tamper resistant receptacles would be required throughout any SF structure

Community Development Department

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MEMORANDUM

TO: Community Development Committee
FROM: Jeff Stehman, Building and Zoning Supervisor
DATE: October 27, 2014
SUBJECT: Adoption of the 2012 ICC Family of Codes – Residential Fire Sprinklers

Summary

The proposed 2012 ICC (International Code Council) Code adoption of the family of codes includes the 2012 International Residential Code (IRC). In 2009, a requirement for single family residential (SFR) sprinklers was added to the IRC. This has created problems nationwide for states and local jurisdictions who feel this should be a local decision. Local jurisdictions had previously been reluctant to amend that section of the code, so a vast majority of jurisdictions remained on the 2006 IRC. In the 5 years since that adoption, the vast majority of jurisdictions and states with state adopted codes have amended those codes and removed the SFR sprinkler requirement. Some states, like Missouri, have even passed legislation prohibiting municipalities from enforcing the SFR sprinkler requirement for new single family residential structures. Only 2 states, California and New Jersey, have adopted statewide codes requiring residential sprinklers.

History

- The SFR sprinkler requirement had always been in the appendix section of the code, which gave the jurisdiction the choice of whether or not to adopt it with the body of the code.
- Prior to the 2009 IRC Code adoption, the National Fire Sprinkler Association (NFSA) began a nationwide effort to force installation of sprinklers in new single family structures.
- Their effort was mostly industry driven and to get it passed, they provided scholarships to firemen who would attend the ICC Conference in Minneapolis to vote for that amendment. On the last day of the conference, they brought in busloads of firemen who the majority of them just attended the one session to vote in sprinklers.
- That action created so much controversy in the ICC Code Development process that since that time ICC has completely changed the voting and registration process to eliminate the ability for one special interest group to make a major code change not fully supported with the consensus of the entire code enforcement community.
- The NFSA then began telling national, state and local code officials that if their jurisdictions removed SFR sprinklers from the 2009 IRC, they would be liable for any fire related deaths, which in turn scared off attempts to amend the code on a local level.
- Jurisdictions all over the country finally started making those amendments, removing the SFR sprinkler requirement. Many have required that the builder or home owner of any new single family structure sign and submit a document with the building permit that they were offered the option to install sprinklers and as the homeowners, they may decline. I have attached a similar requirement from Bloomington, IL as an example. This is the option we would like to add as an amendment to our ordinance adoption.
- There is not a building code or fire official that does not believe that SFR fire sprinklers are safer and provide better protection to homes, but most all building officials feel that decision should be made by the homeowner and not dictated by jurisdictions.

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- In 2013, the Illinois State Fire Marshall tried a backdoor attempt to require sprinklers in single family homes through a JCAR administrative update of the 2012 Life Safety Code. That effort was stopped in August 2013 by a ground swell of opposition throughout the state. Any future change he wants to impose regarding SFR sprinklers will have to go through the legislature where it is more transparent and can be debated.

Recommendation

We are proposing that the SFR sprinkler requirement be removed from the body of the code and moved back into the appendix, for code standard purposes and then require that the signed refusal document be part of the building permit submittal.

Chapter 10 – Building Code

Part VII - PLUMBING. Chapters 25 through 32 The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of the Illinois State Plumbing Code currently adopted by the City. (Ordinance No. 2012-05)

Section R105.2 : Work Exempt from Permit.

Modify the section by deleting subsections 1, 2, 3, 4, 5 and 10.

Section R112 : Board of Appeals.

Modify by deleting the section in its entirety. (Ordinance No. 2014-07)

Section R313 : Automatic Fire Sprinkler Systems.

Modify by deleting the section in its entirety. (Ordinance No. 2014-07)

Section R313.1 : Townhouse Automatic Fire Sprinkler Systems.

Modify by deleting the section in its entirety. (Ordinance No. 2014-07)

Section R313.1.1 : Design and Installation.

Modify by deleting the section in its entirety. (Ordinance No. 2014-07)

Section R313.2 : One- and Two-Family Dwellings Automatic Fire Systems.

Modify by deleting the section in its entirety. (Ordinance No. 2014-07)

Section R313.2.1 : Design and Installation.

Modify the language to read as follows: When provided, automatic residential fire sprinkler systems shall be designed and installed in accordance with Section P2904 or NFPA 13D/2010. (Ordinance 2014-07)

Section R313.3 : Automatic Fire Sprinkler Systems; Mandatory Offer Required.

A contractor or builder of a one- or two-family dwelling subject to the International Residential Code shall:

(a) Offer to the prospective purchaser or buyer the option to install, at the buyer's expense, an automatic fire sprinkler system in the building or dwelling unit designed and installed in accordance with the provisions of section R313.2.1 (relating to design and installation of automatic fire sprinkler systems) of the International Residential Code (2012 edition).

(b) Provide the prospective purchaser or buyer with information explaining the costs and benefits of installing and maintaining an automatic fire sprinkler system in the building or dwelling unit. The information provided shall include the following publications from the Home Fire Sprinkler Coalition:

- (i) *Protect What You Value Most*
- (ii) *The Future of Fire Safety Here Today*
- (iii) *Now That You're Living With Sprinklers*

(c) Before issuance of a building permit for any one- or two-family residence, the contractor/ applicant shall provide to the Planning and Code Enforcement Department a document signed by both the contractor and prospective purchaser or buyer (or in the case of one or two family dwellings built prior to having an identified buyer (commonly known as "spec homes"), signed by the contractor in place of the prospective purchaser or buyer) stating that the contractor has provided to the prospective purchaser or buyer the information required by Section 1(b) of this ordinance. (Ordinance No. 2012-05)