COUNCIL BILL NO. 2012-009 **ORDINANCE NO.** 2012-111

AN ORDINANCE approving a Predevelopment Agreement by and between the City of Joplin and Wallace Bajjali and the Joplin Redevelopment Corporation, for Master Development Services to help Joplin recover from the EF-5 tornado that occurred May 22, 2011; authorizing the City Manager to execute said Predevelopment Agreement by and on behalf of the City of Joplin; and containing an emergency clause.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOPLIN, MISSOURI,

AS FOLLOWS:

Section 1. That the Predevelopment Agreement by and between the City of Joplin, Wallace Bajjali, and the Joplin Redevelopment Corporation, relating to private-public partnerships to help Joplin recover from the EF-5 tornado that occurred May 22, 2011, a copy of the same being attached hereto, be and the same is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute said Agreement, by and on behalf of the City of Joplin, Missouri.

Section 3. That this Ordinance is an emergency within the meaning of Section 2.12(1)(6) of the Home Rule Charter of the City of Joplin, Missouri, in that said ordinance deals with the preservation of property, health, and safety and relating to public improvements, and as such, is considered an emergency and shall take effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 2nd day of July, 2012, by a vote of 9-0.

Melodee Colbert-Kean, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

MASTER PREDEVELOPMENT AGREEMENT

by and between

CITY OF JOPLIN, MISSOURI,

JOPLIN REDEVELOPMENT CORPORATION, INC.

and

WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P.

Dated as of [July 2 **], 2012**

ORD. 2012-111

REDEVELOPMENT OF JOPLIN, MISSOURI

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MASTER PREDEVELOPMENT AGREEMENT

THIS MASTER PREDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between CITY OF JOPLIN, MISSOURI (the "City"), JOPLIN REDEVELOPMENT CORPORATION, INC., an urban redevelopment corporation organized under the Missouri Urban Redevelopment Corporations Law (the "JRC" and together with the City, collectively the "City Group") and WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P., a Texas limited partnership (the "Developer" and together with the City Group, each a "Party" and collectively the "Parties"), effective as of the 2nd day of July, 2012 (the "Effective Date").

RECITATIONS:

WHEREAS, on May 22, 2011, an EF-5 tornado devastated the City of Joplin, Missouri, including a portion of such city described herein as the Redevelopment Area, and destroyed many of the homes and businesses there;

WHEREAS, the City created the Citizens Advisory Recovery Taskforce (the "CART") as the community based advisory board charged with assessing the situation and crafting recommendations for a community response to the tragedy;

WHEREAS, the CART; through an open public process solicited, community input and created a list of recommendations which were adopted by the City;

WHEREAS, the City desires to create and successfully implement a plan for the redevelopment of a significant portion of the Redevelopment Area (the "Redevelopment Project");

WHEREAS, the City issued a Request for Proposal and Qualifications in connection with redeveloping the Redevelopment Area on December 29, 2011 (as supplemented and amended, the "RFQ"), which requested qualifications from interested developers;

WHEREAS, the Developer desires to assist the City Group in creating a series of concept plans and plans of finance (collectively, the "Master Plan") for the Redevelopment Project, which concept may include "Public Sector Assets" such as one or more convention centers, multi-purpose event centers, libraries, workforce development centers, visual and performing arts centers, memorial museums and gardens, depots, various parks, university and higher education facilities, student and faculty housing, the relocation of the post office, parking infrastructure related to the foregoing; "Private Sector Assets" such as single family residential, duplex and fourplex residential, affordable housing residential, multi-family residential, town home, condo residential, loft residential, specialty retail, specialty medical use, assisted living, independent living, memory care, office space facilities, one or more convention center hotels, medical office buildings and wellness centers; and various other Projects identified by the Developer and the City Group;

WHEREAS, the Developer submitted a proposal dated January 30, 2012, which included a summary of the composition of its development team, statements regarding its qualifications to

undertake the Redevelopment Project and its record of development experience, business and financial references, and conceptual approach to the overall Redevelopment Project;

WHEREAS, the City reviewed all proposals submitted by respondents to the RFQ, and, having evaluated and considered said proposals and interviewed four (4) applicants, the City advised the Developer that the Developer was selected to provide the services set out in this Agreement to the City Group on an exclusive basis;

WHEREAS, on April 2, 2012, the City passed a resolution authorizing negotiations with the Developer for the Redevelopment Project;

WHEREAS, the City Group and the Developer executed a Letter of Intent (the "LOI") to confirm the exclusive nature of the negotiations among the parties hereto for the services to be provided hereunder, identify steps that each Party must undertake and to provide for such contingencies as the Parties deem appropriate;

WHEREAS, the City Group anticipates the need to utilize the JRC as the vehicle for the creation of a land bank for the acquisition and assemblage of land in and around the Redevelopment Area and the JRC agrees to assist the City Group in the redevelopment effort.

WHEREAS, the City Group desires to engage the Developer to carry out certain duties regarding the creation and development of the Master Plan, including without limitation the "Predevelopment Services" described below;

WHEREAS, the Parties acknowledge the need to, in connection with creating the Master Plan, undertake promptly a defined series of public and private predevelopment tasks and activities, including publicly sponsored and privately sponsored property assemblage, site investigations, master planning and design, engineering and infrastructure planning, market analysis, financing feasibility and planning, and community engagement and support services;

WHEREAS, the City Group and the Developer agree that in developing a Master Plan they are willing and open to considering the use of various legal structures, the application of all existing local state and federal economic development programs and tools, the creation of new economic development programs, as well as all reasonable means by which those tools and structures may be employed to accomplish the redevelopment of the Redevelopment Area;

WHEREAS, it is proposed that the City Group and the Developer will undertake the creation of the Master Plan as a "team" and in connection therewith the Developer will have the right to consult with and/or contract with such third parties (including architects and other professionals) as may be necessary to properly develop the Master Plan;

WHEREAS, in furtherance of the redevelopment goals for the Redevelopment Area, the City Group and the Developer now do acknowledge the need for and desirability of the participation and financial assistance of other government, philanthropic, civic, business, faith-based, and community organizations and entities in the preparation of a Master Plan and the implementation and funding of the Redevelopment Project;

WHEREAS, in order for the Developer to undertake Projects within the Redevelopment Area, it may be necessary for the City Group to be a participant with the Developer, pursuant to the terms of Final Development Agreement(s) (as defined in Appendix A), in order to provide assistance to accomplish Projects (as defined in Appendix A) and, therefore, the Parties hereto desire to identify issues that must be addressed prior to any such Final Development Agreement(s) are entered into between the Parties;

WHEREAS, the City Group and the Developer desire for the Developer to have the exclusive opportunity, as more specifically set forth in this Agreement and any future Final Development Agreements, to actively participate with the City Group and/or any City Controlled Entity (as defined in Appendix A) in the development and construction of Projects within the Redevelopment Area;

WHEREAS, the Parties desire to enter into this Agreement in order to: (a) designate the Developer as the exclusive developer with which the City Group and/or any City Controlled Entity will be a participant, during the period hereof and continuing thereafter as described below, for the purpose of implementing Projects within the Redevelopment Area; (b) set forth their agreement as to how to create and develop the Master Plan, and the relative responsibilities of the Parties in the creation of the Master Plan; and (c) set forth the issues to be explored and addressed prior to the entering into of any Final Development Agreement(s) between the Parties;

WHEREAS, the City Group, as contemplated by this Agreement, may hereafter in phases acquire for itself or through a City Controlled Entity fee simple title to certain tracts of land located within the Redevelopment Area; and

WHEREAS, the City Group and the Developer desire to enter into this Agreement to evidence the engagement of the Developer by the City Group as an independent contractor in connection with the above and the hereafter described duties and to evidence the respective obligations of the Developer and the City Group in connection therewith.

AGREEMENTS:

For and in consideration of the premises and the mutual covenants and agreements herein contained, the adequacy of all of which consideration is hereby acknowledged, the City Group and the Developer, intending to be legally bound, hereby make and enter into this Agreement on the following terms and conditions:

ARTICLE I
RECITALS AND DEFINITIONS

1.1 **Recitals**. The recitals are hereby incorporated in the terms and provisions of this Agreement and are fully binding on the Parties.

1.2 **Definitions**. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A.

ARTICLE II
REPRESENTATIVES

2.1 **City Group Representative**. The City Group hereby designates the person from time to time serving as its City Manager (or such successor position), and being Mark Rohr as of the Effective Date, to be the representative of the City Group (the "City Group Representative"). The City Group shall have the right, from time to time, to change the individual who is the City Group Representative by giving at least ten (10) days prior written Notice to the Developer thereof. With respect to any action, decision or determination to be taken or made by the City Group under this Agreement, the City Group Representative shall take such action or make such decision or determination or shall notify the Developer in writing of the person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such person(s) for response or action. Any written Approval, decision, confirmation or determination of any one of the individuals from time to time serving as the City Group Representative acting alone and without the joinder of the other individuals then serving as the City Group Representative shall be binding on the City Group; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the City Group Representative shall not have any right to modify, amend or terminate this Agreement.

2.2 **Developer Representative**. The Developer hereby designates the person from time to time serving as its Chief Executive Officer (or such successor position), and being David G. Wallace as of the Effective Date, to be the representative of the Developer (the "Developer Representative"), who shall be authorized to act on behalf of the Developer under this Agreement. The Developer shall have the right, from time to time, to change the individual who is the Developer Representative by giving at least ten (10) days' prior written Notice to the City thereof. With respect to any such action, decision or determination to be taken or made by the Developer under this Agreement, the Developer Representative shall take such action or make such decision or determination or shall notify the City in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination hereunder by the Developer Representative shall be binding on the Developer; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the Developer Representative shall not have any right to modify, amend or terminate this Agreement.

ARTICLE III
PREDEVELOPMENT SERVICES AND PAYMENT

3.1 **Engagement**. Subject to the provisions of this Agreement, the City Group hereby engages the Developer for the performance of the duties herein set forth, during the Term of this Agreement, regarding the predevelopment and development of the Redevelopment Area. Subject to the provisions of this Agreement, the Developer hereby accepts such engagement and, acting as an independent contractor, shall, during the Term of this Agreement, perform the duties and responsibilities set forth below:

(a) coordinating and overseeing the creation of the Master Plan;

(b) conducting feasibility studies and land assessments necessary to determine the market need and success of potential Projects;

(c) analyzing historic and current site conditions, including soil conditions, depth, direction and flow of groundwater, areas of concern for the presence Hazardous Materials, topographic opportunities and constraints, and current and historic uses;

(d) identifying Projects in the Redevelopment Area or elsewhere that will provide planning anchors for further development within the City of Joplin, Missouri;

(e) consulting with and advising the City Group with respect to the master planning of the development of the Redevelopment Area;

(f) coordinating with contractors and the City Group regarding cost estimates for the studies and assessments relating to the creation of the Master Plan;

(g) selecting architects, engineers, general contractor and sub-contractors with respect to the feasibility, design and construction of any additional infrastructure improvements related to the development of the Redevelopment Area;

(h) negotiating contracts for services necessary to design and plan the Master Plan, including contracts with architects, engineers and other professionals;

(i) coordinating with any architects, engineers and other professionals on matters relating to the preparation of the Master Plan;

(j) conducting a transportation and parking analysis (or entering into a contract with a consultant to do same), together with a description of the transportation improvements that will be necessary to support the implementation of the Master Plan, including a street plan; access locations to Main Street and other major thoroughfares; pedestrian and bicycle facilities; phased transportation improvements; traffic mitigation and parking ratios;

(k) coordinating with the City Group to determine the best strategy or strategies for the acquisition and assembly of portions of the Redevelopment Area not presently owned by the City Group or a City Controlled Entity;

(l) acting as the agent for the City Group in the acquisition of land both within and possibly outside of the Redevelopment Area which will be used in the anticipated Projects;

(m) using reasonable efforts to involve, where appropriate, local businesses of the Joplin, Missouri area such as banks, title companies, real estate brokers and agents, general contractors, architectural firms, civil engineers and public communications services to assist the Developer in performing the Predevelopment Services hereunder;

(n) using reasonable efforts to notify such local businesses of opportunities to provide services and/or products in connection with the Master Plan;

(o) accepting and evaluating bids and preparing analyses of bids submitted, providing consultation regarding acceptance of bids, and reviewing contracts and related documents, all to the extent related to the creation of the Master Plan;

(p) preparing a supplement to the Budget for the creation and completion of the Master Plan;

(q) working with the City Group in the evaluation of all programs, budgets, plans, schedules and other design parameters for the creation of the Master Plan, including estimates of costs of planning, designing, and constructing Projects that part of the Master Plan;

(r) coordinating with the City Group's consultants in connection with obtaining necessary permits, approvals and concessions from Governmental Authorities for creating the Master Plan and Projects contemplated by the Master Plan;

(s) assisting the City Group's consultants in connection with the representation of the City Group in its dealings with the utility companies and utility districts serving the Redevelopment Area, including attendance at meetings at which issues affecting the Master Plan are on the agenda;

(t) creating and implementing a public communications program to disseminate information on the creation of the Master Plan to the general public in a timely manner and provide additional opportunities to gather input from the general public regarding the creation of the Master Plan;

(u) preparing, directing, managing and engaging all aspects of the community planning process for the Redevelopment Area. The community planning process shall include: stakeholders engagement, existing neighborhood conditions, revitalization goals, an extensive public "charrette" process, public infrastructure requirements, identification of collateral investment opportunities, a community support services plan, preliminary estimation of development budget and costs, preliminary development phasing schedules, and preliminary financing feasibility plans for the initial development phases indicating sources and uses of all proposed public and private funding;

(v) consulting with the City Group regarding availability and selection of financing and other monetary sources for the creation of the Master Plan and the Projects contemplated thereby;

(w) coordinating the work of the various professionals involved in performing the planning, feasibility and assessment studies; establishing site organization and lines of authority, and monitoring such professionals, in order to minimize areas of conflict and overlapping of work and to assure compliance with the established Progress Schedule (as defined in Appendix A) and the contract documents;

(x) consulting with contractors and designated parties regarding the status of the work of each and assisting in assessing the state of the progress of the Master Plan or

any part thereof, in order to monitor compliance with the Progress Schedule and contract documents;

(y) recommending necessary or desirable changes in the Predevelopment Services to the City Group, reviewing requests for change orders, negotiating proposals by hired or contracted professionals, and, if changes are approved, preparing change orders for execution by such parties, if necessary, and the City Group;

(z) providing sufficient administrative, management and clerical services, and a sufficient number of capable administrative, management and clerical personnel, to carry out the responsibilities of the Developer set forth in this Article III;

(aa) recommending to the City Group operating procedures and policies to guide the conduct of the City Group's development of the Redevelopment Area and recommend operating policies and practices which maintain the desired identity of the Redevelopment Area; following the enactment by the City Group of such policies, procedures and practices, assisting the City Group in the implementation of such policies, procedures and practices;

(bb) assisting the City Group in coordinating all agreements for electricity, natural gas, and other utility services to the Redevelopment Area;

(cc) consulting with the City Group regarding the selection of, negotiation with, and engagement of, architects, surveyors, engineers, and consultants for the design, development and construction of the Projects;

(dd) generally undertaking any other planning, development and financing efforts necessary to create the Master Plan;

(ee) assembling all information and findings connected with the foregoing into a Master Plan so as to be prepared to formally present such to the City on or before the Completion Date; and

(ff) creating recommendations regarding a local, state and federal legislative agenda for action items, including introducing and promoting modifications to existing legislation as well as drafting and introducing new legislation which would benefit the Redevelopment Area. The Developer will coordinate with the City Group, the City Group's legislative consultant and the area legislative delegation in the creation of any recommendations.

The predevelopment services described in this Section 3.1 above are referred to herein as the "Predevelopment Services". The Developer agrees that all Predevelopment Services shall be prosecuted with due diligence, completed with all reasonable dispatch and conducted in a manner which reflects the standards and procedures that would be followed by a Reasonable and Prudent Developer.

3.2 **Additional Developer Duties**.

(a) Community Meetings. The Developer will arrange for a series of community meetings to be held, in consultation with the City Group, and will be responsible for (i) identifying the local participants (with input from the City Group) and (ii) distributing such materials as determined to be appropriate in order to obtain useful input from the participants at the community meetings. The Developer agrees to provide representatives reasonably acceptable to the City Group to attend these community meetings, to meet with public officials to discuss the development review process necessary to create the Master Plan, and to participate in the regular meetings with the City Group and its departments necessary to create the Master Plan.

(b) Advisor Contracts. The Developer shall have the right to seek the advice and consultation of such third parties as the Developer deems necessary, including architects, traffic engineers, environmental companies and companies that perform market or feasibility studies. The Developer agrees to enter into contracts with all such third parties; *provided, however,* that the City Representative shall have the right if acting in good faith to reject the Developer's use of any such third party based upon the following criteria: failure to meet the standards of a Qualified Advisor, the reasonableness of the fees and costs, past experience with similar projects, and any negative past dealings with the City. Developer shall promptly provide notice to the City Representative of any proposed procurement of a third party, along with such additional information regarding such third party or the services to be provided by same as may reasonably be requested by City Representative. City Representative shall have thirty (30) days after the initial notice from Developer regarding such procurement to accept or reject in writing the proposed contracting by Developer with such third party. City Representative's failure to either accept or reject any proposed third-party contract in writing within such thirty (30) days of notice from Developer shall be deemed an acceptance of such proposed third party contract.

3.3 **Joint Duties**.

(a) Progress Schedule. The Developer and the City Group, within sixty (60) days after the Effective Date, shall prepare an estimated schedule for the performance of the Predevelopment Services ("Progress Schedule"), including the creation of the Master Plan and property assemblage, which Progress Schedule will be incorporated into this Agreement as Exhibit C. The Progress Schedule shall be of sufficient detail and sophistication for the nature and scope of creating the Master Plan and for property assemblage and shall include a reasonable set of major milestones and timelines associated with each. However, the Parties shall have the right, not to be exercised unreasonably, to change by mutual agreement the criteria and priorities of the Progress Schedule during the duration of the Term. Both the City Group and the Developer shall be responsible for adhering to the Progress Schedule and shall monitor, revise and update the Progress Schedule on a monthly basis.

(b) Cooperation and Information Exchange. The Parties agree to meet regularly (which may be implemented by conference calls among all participants) to advise each regarding progress on any one or more of the undertakings required during the Term of this Agreement. The Developer agrees to share with the City Group such

information as may be developed regarding the creation of the Master Plan, including financing, marketing and land-use issues, design questions and construction issues regarding Projects. The City Group shall provide copies of all reports and information in its possession regarding the Redevelopment Area, including design studies, as-builts, traffic studies, environmental assessments, building evaluations and engineering reports, geotechnical assessments, ownership and property tax information, leases, rent rolls, and operating expense reports. To the extent any information is deemed necessary to the fulfillment of this Agreement, but is otherwise unanticipated, unavailable or non-existing, the City Group and the Developer agree to collaborate on developing such information.

(c) Obligations to Consult and Cooperate. The City Group and the Developer shall: (i) meet regularly with community representatives, steering or similar committees and others to review and approve the work being performed by each Party; (ii) give prompt notice to the other Party whenever one Party becomes aware of any defect in the work being performed by the other Party; (iii) assist each Party in obtaining approval of governmental authorities as may be necessary for completion of its tasks and duties under this Agreement; (iv) assist each Party in the development, promotion and passage of local, state and federal ordinances and legislation deemed necessary to facilitate the redevelopment of the Redevelopment Area; (v) support efforts by the Parties to explore, pursue, solicit and obtain other private, public and philanthropic funding sources to underwrite and supplement the costs of the creation of the Master Plan or the Projects contemplated thereby; (vi) direct any necessary additional services as agreed upon by the Parties; and (vii) coordinate investigating (A) various legal structures, (B) all existing local state and federal economic development programs and tools, (C) potential new economic development programs and tools and (D) appropriate means by which to implement the foregoing (A) - (C), in each case as they apply to the creation of the Master Plan and the implementation of Projects thereunder.

3.4 **Developer Access**. The Developer shall have the right of access, for itself and its authorized representatives, agents, advisors and contractors, to any portions of the Redevelopment Area now or hereafter owned or controlled by the City Group or any City Controlled Entity, without charges or fees, for the purposes of performing or undertaking any rights or obligations of the Developer under the terms of this Agreement, including performing the Predevelopment Services.

3.5 **Payment of Pursuit Costs**.

(a) Pursuit Costs. On or before thirty (30) days after the Completion Date, the City Group shall reimburse the Developer for fifty percent (50%) of the Pursuit Costs (as defined in Appendix A).

(b) Certification of Pursuit Costs. As a condition to the Developer's being entitled to payment under this Section 3.5, the Developer must submit to the City Group invoices or other evidence showing the amount of Pursuit Costs incurred by the Developer and a reasonable description of the services or costs incurred in connection therewith. Developer shall submit its request for certification of Pursuit Costs incurred within one hundred twenty (120) days of the applicable Completion Date. For all Pursuit

Costs incurred by Developer prior to the Effective Date, such Pursuit Costs shall be submitted for certification within one hundred (120) days after the Effective Date. Upon presentation to City Representative of an application for certification of Pursuit Costs which details Pursuit Costs paid in accordance with this Agreement together with such supporting documentation (including copies of invoices, cancelled checks, wire transfer confirmations, receipts, lien waivers, any agreements with third parties which provide that such third parties shall be paid at such time as City reimburses the Developer for such services, and such other supporting documentation as City Representative shall reasonably require) as City Representative shall reasonably determine to be necessary (the "**Certification Application**"), City Representative shall review, verify and confirm the information included in the Certification Application. The Certification Application shall (1) identify each item of Pursuit Cost by line item category in the Budget separately, (2) aggregate all costs in the Certification Application by line item category as set forth in the Budget, (3) include a report setting forth the total amount, by line item category from the Budget, of all Pursuit Costs set forth in the then-current Certification Application and all prior Certification Applications approved by City Representative or for which approval is pending, and (4) include a report setting forth the percentage of work, by line item category from the Budget, completed as of the date of the current Certification Application. If City Representative determines in good faith that: (i) the Certification Application accurately reflects Pursuit Costs paid in accordance with this Agreement and (ii) the Pursuit Costs for which certification is requested (considered in combination with all prior amounts certified for the same cost category or item, as applicable) are in accordance with the Budget (subject to the foregoing sentence), it shall approve the Certification Application and issue an approval certificate. Developer shall, in each Certification Application, identify the specific line item within the Budget as to which each Pursuit Cost for which certification is requested is assigned. Savings in the amount expended with respect to any specific line item in the Budget may be used to fund cost overruns in another line item of the Budget. If City Representative, pursuant to its review of such Certification Application and supporting documentation, determines in good faith that any portion of the request for certification should not be approved, it shall promptly state the reasons for such disapproval to Developer. No Certification Application will be approved if it causes the total Pursuit Costs to exceed the Budget without prior City Representative approval. Any such disapproval may be appealed by Developer to the City Council, which shall upon Developer's request hold a hearing at which Developer may present new and/or additional evidence. Each Certification Application for Pursuit Costs shall be approved administratively, and no action of the City Council shall be required to approve such Certification Application. The City Representative shall respond within thirty (30) days to all requests by Developer for approval under this Section.

3.6 **Developer's Authority to Bind City Group**. The Developer shall have no authority to bind or commit the City Group in any negotiations with any third party in connection with the creation of the Master Plan or the redevelopment of the Redevelopment Area.

ARTICLE IV
BUDGET

4.1 **Budget**. Attached hereto as Exhibit B is an initial budget showing the costs to be incurred by the Developer for the performance of the Predevelopment Services, including the creation of the Master Plan (as such may be amended from time to time pursuant hereto, the "Budget"). The Developer shall revise and supplement the Budget from time-to-time as reasonably necessary. The City Group and the Developer shall work cooperatively to jointly review revisions and supplements to the Budget in order to reflect the actual incurrence of Pursuit Costs, updated estimates of Pursuit Costs budgeted and/or the progress of the performance of the Predevelopment Services. Any and all supplements and revisions to the Budget prepared by the Developer shall be subject to the Approval of the City Group.

4.2 **Budget Monitoring**. The Developer shall monitor the Budget for costs associated with the performance of the Predevelopment Services showing actual costs for activities in progress and estimates for uncompleted tasks, identifying variances between actual and budgeted or estimated costs, incorporating approved changes as they occur, and consulting with the City Group whenever projected costs exceed the Budget or estimates.

4.3 **Limitation on Liability**. Evaluation of the Budget by the Developer represents the Developer's best judgment as a professional familiar with the commercial real estate development industry. It is recognized, however, that the Developer does not have control over the costs of labor, materials or equipment. Accordingly, the Developer cannot and does not warrant that Pursuit Costs will not vary from the Budget.

ARTICLE V
PROGRESS REPORTS

5.1 **Reports**. The Developer shall record the progress of the performance of the Predevelopment Services and shall, at the reasonable request of the City Group from time to time (no less frequently than monthly), submit written progress reports to the City Group with regard thereto, which progress reports will include information regarding any materially changed conditions as to cost or schedule. The Developer's progress reports shall also provide reasonably detailed updates on all other significant aspects of the performance of the Predevelopment Services, including the status of any negotiations or discourse with Governmental Authorities or civic, community or neighborhood groups.

ARTICLE VI
INDEMNITY

6.1 **Indemnification**. The Developer shall be indemnified (to the extent permitted by law) and held harmless by the City Group from and against any and all claims, demands, liabilities, costs (including reasonable attorneys' fees), damages, and causes of action of any nature whatsoever to the extent caused by any Improper Action on the part of the City Group, a City Controlled Entity and their respective agents, contractors (excluding the Developer) or employees. The City Group shall be indemnified and held harmless by the Developer from and against any and all claims, demands, liabilities, costs (including reasonable attorneys' fees),

damages and causes of action of any nature whatsoever to the extent caused by any Improper Action on the part of the Developer, its agents, contractors or employees. If, with respect to a given event or circumstance occurring or existing during the Term of this Agreement, an indemnified Party pays money to any other person as a result of an Improper Action by the other Party, its agents or employees, then the other Party shall repay to the indemnified Party, on written demand, the sum of (i) such payments actually made by the indemnified party, plus (ii) interest thereon at the Default Rate from the respective dates on which such payments were made by the indemnified party until repaid by the other Party.

6.2 **Good Faith**. Notwithstanding any other provisions of this Agreement to the contrary, so long as the judgments made by the Developer in connection with the performance of the Predevelopment Services are made in good faith as a Reasonable and Prudent Developer and the Developer, its agents or employees have not committed an Improper Action, the Developer shall not be responsible or liable to the City Group or any City Controlled Entity for any errors in judgment by the Developer, its agents or employees in connection with the performance of the Predevelopment Services.

ARTICLE VII
INSURANCE

7.1 **Insurance by City Group**. The City Group shall maintain in full force and effect, at its own cost and expense, insurance in accordance with Schedule 1 attached hereto. The City Group will cause the Developer to be named as an additional insured on the insurance policies to be maintained by the City Group.

7.2 **Insurance by Developer**. The Developer shall maintain in full force and effect, at its own cost and expense, the following insurance coverage:

(a) Worker's Compensation coverage, covering all employees or agents of the Developer involved with the performance of the Developer's services hereunder, with policy amounts and coverage in compliance with Applicable Laws and with an Alternative Employer/Borrowed Servant endorsement in favor of the City Group;

(b) Employer's Liability coverage in an amount equal to or greater than an amount that a Reasonable and Prudent Developer would maintain;

(c) Commercial General Liability coverage of no less than $1,000,000 combined single liability limit per occurrence and $2,000,000 annual aggregate. Commercial General Liability shall include bodily injury, contractual liability, products and completed operations; and

(d) Comprehensive Auto Liability coverage of no less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. The policy shall cover non-owned and hired automobiles.

7.3 **Additional Insured**. All of the policies of insurance to be carried by the Developer pursuant to Section 7.2 shall contain endorsements naming the City Group as an additional insured thereunder.

7.4 **Insurance Standard**. The insurance required to be maintained by each Party shall be maintained with financially responsible insurance carriers licensed to do business in Missouri and rated by AM-Best Rating Service as AX or better (unless otherwise agreed to by the City Group and the Developer). Each Party may carry its insurance as part of a blanket insurance policy and in a combination of primary and excess liability coverage.

7.5 **Waiver of Claims and Subrogation**. The City Group and the Developer each waive any and all rights of recovery against the other for or arising out of damage to or destruction of property to the extent that such damage or destruction could be insured against by casualty policies obtained by the City Group and/or the Developer, as applicable. The Developer and the City Group each shall require that all insurance policies obtained by such Party contain waivers of subrogation rights in favor of the other for all claims on account of all matters insured thereby.

7.6 **Insurance Certificates**. Each of the City Group and the Developer shall furnish insurance certificates to the other, and will submit such certificates to the other prior to or contemporaneously with the execution of this Agreement. The insurance certificates shall specifically state that (i) the insurer will not cancel or reduce coverage or fail to renew any policy issued to the City Group or the Developer, as applicable, without first providing thirty (30) days' written notice to the other Party and (ii) the insurers shall have no right of subrogation. Not less than fifteen (15) days prior to the expiration date of any such insurance policies, each Party shall deliver to the other certificates of insurance, in substantially the same form as initially approved by the other party, evidencing renewals thereof. Neither Party shall, however, be deemed to waive these requirements if such Party has failed to request, or the other Party has failed to provide, the aforementioned certificates.

7.7 **Cooperation**. Each of the City Group and the Developer shall furnish to the other whatever information is reasonably requested by the other for the purpose of establishing insurance coverages.

ARTICLE VIII
TERM

8.1 **Term**. This Agreement shall commence as of the date hereof and, subject to earlier termination as hereinafter provided, shall continue until all payments required under Section 3.5 of this Agreement have been duly and fully paid to the Developer (such period, the "Term").

8.2 **Presentation to City Group**. The Developer agrees to use commercially reasonable efforts to complete portions of the Master Plan with reasonable dispatch; *provided, however* that Developer shall use commercially reasonable efforts to be prepared to formally present (i) an initial portion of the Master Plan to the City for City Council's consideration on or before September 30, 2012 and (ii) all portions of the Master Plan to the City for City Council's consideration (through one or several such presentations) on or before Dec. 31, 2013, in each case subject to Force Majeure and subject to the obligation of the City Group to (a) timely provide all required selections and approvals requested by the Developer so as not to delay the Progress Schedule and (b) timely comply with all of its other obligations under this Agreement.

The portions of the Master Plan to be presented to City Council shall include the Developer's findings, assessments and suggested Projects with respect to the applicable portion of the Redevelopment Area, as well as a master project schedule, financing plan(s) and lists of any co-development partners related thereto and known at that time. Following the formal presentation of each portion of the Master Plan to City Council, City Council shall determine, based on the best interests of the Redevelopment Area and the citizens of the City of Joplin, Missouri, whether to proceed forward with redevelopment of the applicable portion of the Redevelopment Area in accordance with such portion of the Master Plan ("Formal Acceptance") or whether to reject all or any portion of such presented Master Plan.

8.3 **Events of Default and Remedies.**

(a) The following shall constitute Events of Default of the City Group or the Developer, as the case may be:

(i) the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law;

(ii) the consent to an involuntary petition in bankruptcy or the failure to vacate within sixty (60) days from the date of entry thereof of any order approving an involuntary petition;

(iii) the entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating such party a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days;

(iv) the gross negligence, fraud or willful misconduct in the performance or observance of its obligations or duties provided for under the terms of this Agreement; or

(v) the failure of either the City Group or the Developer to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of any such default for a period of thirty (30) days after written Notice of said failure or, if the default is not a default in the payment of a monetary sum provided to be paid under this Agreement, the default is susceptible of cure with reasonable diligence, and such party commences such cure promptly following receipt of written Notice of said failure, then for such additional period as the cure shall continue to be pursued with reasonable diligence.

(b) Upon the occurrence of an Event of Default, the non-defaulting Party may, without prejudice to any other recourse at law or in equity which it may have, terminate this Agreement upon written Notice to the defaulting Party and, in such event, this Agreement shall terminate as of the date such Notice is given.

(c) Upon the occurrence of an Event of Default by the Developer, the City Group shall have the right to take such action as shall be necessary to cure such default on behalf of the Developer, and the Developer shall pay to the City Group, immediately upon demand by the City Group, such sums as the City Group has incurred or is obligated to pay in order to cure such default, plus interest thereon from the date of advancement by the City Group at a rate equal to the Default Rate.

8.4 **Termination by City Without Cause**. City may terminate this Agreement at any time, without cause, but only with respect to any portion of the Master Plan for which Formal Acceptance has not been delivered, by giving the Developer at least ninety (90) days prior written notice thereof and paying to the Developer the termination fee described below. Upon the effective date of such termination, the obligations of the parties hereto (except those specified as surviving) shall cease as of the date specified in the notice of termination, except that (i) City shall not be obligated to reimburse the Developer for any Pursuit Costs associated with work or services commissioned or contracted for by the Developer after the date of the notice of termination (except for any such costs the Developer may incur for purposes of reducing Pursuit Costs otherwise payable by the Developer), (ii) City and the Developer shall comply with the applicable provisions hereof and (iii) City shall be obligated to pay to Developer a termination fee on the effective date of termination in an amount as follows:

(a) If the effective date of termination under this Section 8.4 occurs on or before the date that is one (1) year after the Effective Date, Five Million and No/100 Dollars ($5,000,000.00);

(b) If the effective date of termination under this Section 8.4 occurs more than one (1) year after the Effective Date but on or before the date that is two (2) years after the Effective Date, Four Million and No/100 Dollars ($4,000,000.00);

(c) If the effective date of termination under this Section 8.4 occurs more than two (2) years after the Effective Date but on or before the date that is three (3) years after the Effective Date, Three Million and No/100 Dollars ($3,000,000.00);

(d) If the effective date of termination under this Section 8.4 occurs more than three (3) years after the Effective Date but on or before the date that is four (4) years after the Effective Date, Two Million and No/100 Dollars ($2,000,000.00); and

(e) If the effective date of termination under this Section 8.4 occurs more than four (4) years after the Effective Date but on or before the date that is five (5) years after the Effective Date, One Million and No/100 Dollars ($1,000,000.00).

ARTICLE IX
REPRESENTATIONS AND GENERAL COVENANTS

9.1 **Representations of City Group**. The City Group represents to the Developer as follows:

(a) Litigation or Administrative Proceeding. To the City Group's actual knowledge, the City Group has received no service of process or other written

notification of any litigation or administrative proceedings which would materially and adversely affect the ability of the City Group to perform any of its obligations hereunder.

(b) Performance. Performance of this Agreement by the City Group will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City Group is a party or by which the City Group might be bound.

(c) Execution. The execution and delivery by the City Group of, and the City Group's performance under, this Agreement are within the City Group's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement on behalf of the City Group has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the City Group enforceable against the City Group in accordance with its terms, subject to the principles of equity.

(d) Environmental. To the City Group's actual knowledge, the City Group has delivered copies, or otherwise made available, to the Developer all documents and reports described in Section 3.3(b) of this Agreement to be provided by the City Group.

(e) Broker. The City Group has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. The City Group agrees to indemnify (to the extent permitted by law) and hold harmless the Developer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. The terms of this Section will survive any expiration or termination of this Agreement for a period not to exceed five (5) years thereafter.

9.2 **Representations of Developer**. The Developer represents to the City Group as follows:

(a) Authorization. The Developer is duly organized and legally existing under the laws of its state of organization. The Developer is duly qualified to do business in the State of Missouri.

(b) Performance. Performance of this Agreement by the Developer will not result in any breach of, or constitute any default under, any agreement or other instrument to which the Developer is a party or by which the Developer might be bound.

(c) Execution. The execution and delivery by the Developer of, and the Developer's performance under, this Agreement are within the Developer's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of the Developer has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to the principles of equity.

(d) Broker. The Developer has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. The Developer agrees to indemnify and hold harmless the City Group from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive any expiration or termination of this Agreement for a period not to exceed five (5) years thereafter.

ARTICLE X
FINAL DEVELOPMENT AGREEMENTS

10.1 **Individual Projects**. In the event that City Council delivers Formal Acceptance, the Parties agree to negotiate and execute Final Development Agreement(s), satisfactory to both Parties, with respect to each specific Project contemplated by the Master Plan; *provided, however,* that Formal Acceptance is not be a prerequisite to the entering into of any Final Development Agreement(s) between the Parties. Accordingly, due to the nature of the various funding sources to be identified by the Developer, the Developer may submit portions or components of the Master Plan to the City before formally presenting the entire Master Plan to the City, and in the event City Council accepts and approves such portions or components and authorizes pursuit of Projects in accordance with same, the Parties may enter into a Final Development Agreement(s) with regard to such Projects prior to the formal presentation by the Developer of the entire Master Plan described in Section 8.2. Although the specific terms of each Final Development Agreement must be negotiated between the Parties, the Parties presently believe that such terms must necessarily address, at a minimum, the following matters, to-wit:

(a) Determination of Types of Uses/Compliance with Master Plan. The Parties must agree on the types of uses that are to be included in the Projects, such as office, retail, commercial, residential, etc. In addition, the Parties must agree on whether or not the Project(s) are in compliance with the Master Plan, as well as other applicable laws.

(b) Public Assistance. The Parties must determine what types of Financial Assistance is applicable, and/or necessary, for any given Project.

(c) Compliance with Laws. Depending upon the types of Financial Assistance that are used, the Parties must address the relative responsibilities of complying with the requirements related thereto.

(d) Agreement on Land Acquisition. The Parties shall agree on (i) the description of each Site; and (ii) the method by which the Site will be acquired, which may include such things as how the appraisals are to be conducted; how, when, and if the City Group's use of eminent domain will be used; how the financing of these matters will occur; and, provisions regarding reacquisition of the Site by the City in the event the

proposed Project does not proceed as planned. Developer acknowledges that any use of eminent domain shall only be exercised in the sole discretion of the City.

(e) Owner's Representative Fee. Pursuant to each Final Development Agreement on Projects for which Developer or an Affiliate of Developer is the developer, the Developer shall receive a "Owner's Representative Fee" for construction management services equal to Two and One-Quarter Percent (2.25%) of Project Costs with respect to the applicable Project (the "Owner's Representative Fee"), which Owner's Representative Fee shall be earned and payable on a monthly basis or as otherwise agreed and provided for in each Final Development Agreement commencing with the commencement of construction on any such Projects.

(f) Relocation Assistance. The Parties shall address how each will comply with any requirement that relocation assistance be provided to persons required to relocate due to a Project.

(g) Agreement on Traffic Circulation and Access Proposals. The Parties shall agree on the design of all access and circulation elements associated with the development of a Project and adjacent and supporting development. The Parties shall also agree on how to address those necessary traffic improvements which are neither on the Site, nor adjacent thereto, but are made necessary because of the Project. The Parties shall agree upon the method of financing of these improvements and the distribution of costs for each element and the responsibility for meeting these costs.

(h) Agreement on Plans and Specifications. The Parties shall agree on the extent of the City Group approval over the plans and specifications for the design of a Project. Specific agreement may be required with respect to those areas of a Project which directly abut or interface with public spaces.

(i) Agreement on Progress Schedule. The Parties shall agree on a progress schedule by which each Project will be undertaken and completed.

(j) Agreement on Vacation of Streets and Relocation of Utilities. The Parties shall agree upon how streets and utilities within, or adjacent to, the Site are to be addressed by the Project, including the vacation of streets, if necessary, and the relocation of utilities, if necessary. The Parties' agreement shall include how the costs of such matters are to be addressed.

(k) Environmental Approvals. The Parties shall agree on how environmental approvals are to be obtained, and who is responsible for obtaining them. The Parties' agreement shall also address how environmental remediation expenses, if required, are to be paid.

(l) Zoning Changes. The Parties shall agree as to how any necessary zoning changes will be addressed, including the timing of such changes.

10.2 **Development Fee**. In consideration of the administration and management by the Developer of the design, development and creation of the Master Plan and all Projects thereunder, the City Group shall cause the entity controlling the funds with respect to such Project to pay, pursuant to the terms of each final development agreement, to the Developer a "Development Fee" equal to five and three-quarters percent (5.75%) of the Project Costs with respect to any Project undertaken within the Redevelopment Area that, (i) directly or indirectly, includes, references or otherwise makes use of any information and/or concepts contained within the Master Plan and (ii) includes the City Group or a City Controlled Entity as a participant in a proposed Project within the Redevelopment Area (such final development agreements being referred to herein as "City Participant Development Agreements"). The City Group or a City Controlled Entity shall be deemed to be a participant in a proposed project if the City Group or a City Controlled Entity, as applicable, provides Financial Assistance for the Project, assists in the acquisition of property to be used for such Project or adopts ordinances, or promotes or advocates for legislation, the primary purpose or a significant purpose of which is to facilitate the Project. The City Group and any City Controlled Entity shall not be deemed to be a participant in a Project when the City Group or a City Controlled Entity, as applicable, simply performs its Governmental Functions. Notwithstanding the foregoing, the City Group and any City Controlled Entity shall not be deemed to be a participant with regard to any of the projects described on Exhibit D attached hereto and incorporated herein . The Development Fee shall be earned and payable on a monthly basis or as otherwise agreed and provided for in each City Participant Development Agreement commencing with the commencement of construction on any such Projects.

10.3 **Project Budget Payment of Pursuit Costs**. Each City Participant Development Agreement regarding Projects for which Formal Acceptance has been delivered shall require that such Project's budget fully reimburse (i) City Group for all Pursuit Costs associated with such Project and previously reimbursed by City Group to Developer and (ii) the Developer for all Pursuit Costs associated with such Project and not otherwise previously reimbursed to the Developer by City Group pursuant to Section 3.5 hereof.

10.4 **Reasonable Level of Earnings**. The Developer acknowledges that the purpose of affording public assistance to the Projects is to accomplish the stated public purposes and not to subsidize otherwise economically viable Projects. Therefore, in order to ensure that the public assistance being provided does not subsidize an unreasonable level of earnings for the Developer, the Parties agree that provisions may be included in each City Participant Development Agreement establishing a reasonable level of earnings for the Project and providing a process by which the City proportionally shares in earnings in excess of the agreed upon level of earnings, *provided however* that at all times due consideration shall be given to the Developer in light of the amount of risk the Developer has assumed in providing its predevelopment services that directly or indirectly led to each City Participant Development Agreement. The terms of this Article X shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

ARTICLE XI
EXCLUSIVITY AND USE OF MASTER PLAN INFORMATION

11.1 **Exclusive Provider of Services**. The City Group hereby agrees that from and after the Effective Date until the Completion Date, the City Group will not and will not permit a City Controlled Entity to engage or contract with any other person or entity to perform the Predevelopment Services or any portion thereof without the express prior written consent of the Developer.

11.2 **Exclusive Developer**. The City Group hereby grants the Developer, for a period of Five (5) years, from and after the date City Council delivers Formal Acceptance to the Developer, the exclusive right to enter into Final Development Agreement(s) with the City Group and any City Controlled Entity, whereby the City Group or a City Controlled Entity becomes a participant in a proposed Project, substantially similar to those identified in the Master Plan and within the Redevelopment Area. During said period of time, the City Group agrees that it will not and will not permit a City Controlled Entity to become a participant with any other person or entity, in the implementation of any substantially similar Project within the Redevelopment Area, without the express prior written consent of the Developer, which consent shall not be unreasonably withheld. The City Group or a City Controlled Entity shall be deemed to be a participant in a proposed project if the City Group or a City Controlled Entity, as applicable, provides Financial Assistance for the Project, assists in the acquisition of property to be used for such Project or adopts ordinances, or promotes or advocates for legislation, the primary purpose or a significant purpose of which is to facilitate the Project. The City Group and any City Controlled Entity shall not be deemed to be a participant in a Project when the City Group or a City Controlled Entity, as applicable, simply performs its Governmental Functions. The terms of this Section 11.2 shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

11.3 **Prohibition on City Group Use of Master Plan Information**. Neither the City Group nor a City Controlled Entity may, without the Developer's prior written consent, use or permit the use of any information provided by or included in the Master Plan, including any studies, data, assessments, proposals, projections, designs or mock-ups. If any person requests the City to disclose any information of a confidential, proprietary or trade secret nature relating to the Developer or the Master Plan under the Missouri Open Meetings and Records Act, Chapter 610 of the Revised Statutes of Missouri, as amended (the "Sunshine Law"), and such information is subject to, or potentially subject to, an exception to disclosure under the Sunshine Law, then prior to making any such disclosure and to the extent permitted by law, the City shall send Notice to the Developer of such request within three (3) business days of the City's receipt of such request. Within three (3) business days of the Developer's receipt of such Notice from the City, the Developer shall notify the City in writing whether the Developer desires the City to seek a judicial determination or a formal opinion of the Missouri attorney general pursuant to Section 610.027.6 RSMo, as amended, as to whether the requested information must be disclosed pursuant to the Sunshine Law; *provided, however,* that the City shall only be required to comply with the foregoing to the extent that the City, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception to disclosure under the Sunshine Law and the Sunshine Law permits the City to take such action to seek a judicial determination or opinion from the attorney general in the circumstance in

question. Upon receipt of a request from the Developer for the City to seek a judicial determination or opinion from the attorney general and provided the City is required to act on same pursuant to the terms hereof, the City, at the Developer's sole cost and expense, shall, with the Developer's assistance, take all necessary actions to draft the documents to seek a judicial determination or opinion from the attorney general so that it may be completed and filed as provided for by the Sunshine Law. After the documents seeking a judicial determination or opinion from the attorney general have been filed, each Party shall cooperate with each other Party in preparing appropriate documents and responses or filings to the court or the attorney general and to any other person with respect to the information request and the judicial determination or opinion request to the attorney general, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third person whose privacy or property interests may be compromised by any such information request in order to enable the City to timely furnish to any such third person any statutory notice required by the Sunshine Law and to seek any applicable exceptions from disclosure under the Sunshine Law. The terms of this Section 11.3 shall survive the termination or expiration of this Agreement for a period not to exceed five (5) years thereafter.

11.4 **Injunctive Relief**. Notwithstanding anything to the contrary contained in this Agreement, either Party may, in addition to all other remedies available to it at law or in equity, obtain an injunction prohibiting any violation by the other Party of the terms of Sections 11.1, 11.2 and/or 11.3. In connection therewith, each Party:

(a) recognizes that the Parties have contributed significant costs in its attempts to create the Master Plan and jointly work towards Formal Acceptance, in material part in reliance on the agreements of the Parties contained in this Agreement, including the provisions of this Article XI; and

(b) acknowledges and agrees that monetary damages could not be calculated to compensate a Party for any violation by the other Party of the covenants, duties and obligations contained in Sections 11.1, 11.2 and/or 11.3.

The Parties agree that (i) the other Party may restrain or enjoin any violation as provided above in Sections 11.1, 11.2 and/or 11.3, or threatened violation of any covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3 without the showing of irreparable harm, balance of harms, or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3, the balance of hardships would weigh in favor of entry of injunctive relief, (iii) the Parties may enforce any such covenant, duty or obligation contained in Sections 11.1, 11.2 and/or 11.3, through specific performance, and (iv) the Parties may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of Sections 11.1, 11.2 and/or 11.3. The Parties further agree and irrevocably stipulate that the rights of the Parties to injunctive relief pursuant to this Section 11.4 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the City Group.

ARTICLE XII
GENERAL

12.1 **Assignment**. The Developer shall not, without the City Group's prior written approval, assign or permit to be assigned any of its rights (other than its right to receive payments of fees and reimbursements under this Agreement, which may be assigned or pledged, but any such assignment or pledge shall be subject to all provisions of this Agreement) or its obligations under this Agreement, whether by operation of law or otherwise; *provided, however,* that the Developer may without the City Group's consent assign any of its rights and obligations under this Agreement to an Affiliate of the Developer. The City Group shall not, without the Developer's prior written approval, assign or permit to be assigned any of its rights or obligations hereunder, whether by operation of law or otherwise; *provided, however,* that the City Group may, without the Developer's consent may assign its rights and obligations under this Agreement to a City Controlled Entity. Notwithstanding the foregoing to the contrary, the Developer may engage contractors, consultants and other third parties to assist the Developer with, and otherwise provide, the Predevelopment Services as set forth in this Agreement.

12.2 **Notices**. Any Notice must be in writing and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States Mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to such party or to an officer or agent of such party, or by post paid telegram, telex, private or commercial telecopy, or Federal Express or similar delivery service, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be deemed to have been delivered and be effective from and after the expiration of four (4) days after it is so deposited. Notice given in any other manner shall be deemed to have been delivered and be effective only if and when received or refused by the party to be notified. For purposes of Notice, the addresses of the parties, until changed as hereinafter provided, shall be as follows:

City:

City of Joplin
602 Main Street
Joplin, MO 64801
417-624-0820, Ext. 200
Attn: Mark Rohr

JRC
602 Main Street
Joplin, MO 64801
417-624-0820, Ext. 200
Attn: Ron Darby, Chairman

Developer: Wallace Bajjali Development Partners, LP
13135 Dairy Ashford Rd., Suite 150
Sugar Land, Texas 77478
Phone: (281) 768-6700
Fax: (281) 768.6719
Attn: Joe Esch

with a copy to:

Andrews Kurth LLP
600 Travis St., Suite 4200
Houston, Texas 77002
Phone: (713) 220-3938
Fax: (713) 238-7295
Attn: Mark B. Arnold

However, each of the entities named in this Section 12.2 as being entitled to receive Notices shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America, by at least five (5) days written Notice to each such other Party.

12.3 **Entire Agreement**. This Agreement shall constitute the entire agreement between the Parties hereto and shall supersede all other prior agreements written or oral between the parties hereto and relating to the Redevelopment Area. No modification hereof shall be effective unless made by supplemental agreement in writing executed by the Parties hereto.

12.4 **Nature of Contract**. The relationship between the City Group and the Developer under the terms of this Agreement shall be that of independent contractors and, notwithstanding anything to the contrary set forth herein, the Developer shall perform its duties and provide the Predevelopment Services as an independent contractor. Except as expressly provided to the contrary in this Agreement, it is agreed that the City Group is concerned only with the result of the performance of such duties and provision of such services and is not directing the Developer as to particular means and methods of performing such duties and providing such services. Nothing contained in this Agreement or in the relationship of the City Group and the Developer shall be deemed to constitute a partnership, joint venture or any other similar relationship.

12.5 **Payments by Either Party**. All payments required to be made by either Party to the other Party pursuant to the terms of this Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address as set forth in this Agreement, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of this Agreement. For the purposes of this Agreement, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account

12.6 **Interest on Overdue Obligations and Post-Judgment Interest**. If any sum due hereunder is not paid by the due date thereof, the Party owing such obligation to any other Party shall pay to such other Party interest thereon at the Default Rate concurrently with the payment of the amount, such interest to begin to accrue as of the date such amount was due and until actually paid. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default or Event of Default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest. The amount of any judgment award obtained by one Party against any other Party in any action or proceeding arising out of an Event of Default by such other Party under this Agreement shall bear interest thereafter at the Default Rate until paid. The terms and provisions of this Section 12.6 shall survive the expiration or earlier termination of this Agreement.

12.7 **Governing Law**. THIS AGREEMENT IS MADE PURSUANT TO, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSOURI.

12.8 **No Waiver: Cumulative Remedies**. The failure of the City Group or the Developer to seek redress for violation, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement, shall not constitute a waiver of the terms of such covenant, agreement, provision or condition at subsequent times or of the terms of any other covenant, agreement, provision or condition, and the City Group and the Developer shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a violation.

12.9 **Partial Invalidity**. If any provisions of this Agreement, or the application thereof to any particular party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other particular party or circumstance, shall be valid and enforceable.

12.10 **Captions**. The captions under the Article numbers and beside the Section numbers of this Agreement are for convenience and reference only and in no way define, limit, or described the scope or intent of this Agreement, and in no way affect or constitute a part of this Agreement.

12.11 **Incorporation of Exhibits**. All Exhibits attached hereto are hereby incorporated herein by this reference and made a part hereof for all purposes.

12.12 **Force Majeure**. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of Force Majeure, performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to (but no longer than) the period of such delay.

12.13 **Attorneys' Fees**. In the event of any dispute regarding this Agreement, the Parties shall each be responsible their respective attorneys' fees and costs of court unless otherwise ordered by the court.

12.14 **Effect of Holidays**. In the event any date specified or computed under this Agreement for the performance of an obligation by any party hereto, or for the occurrence of any

event provided for herein, shall be a Saturday, Sunday or "recognized holiday" (defined for purposes hereof as any holiday observed by national banking associations), then the date for such performance or occurrence shall automatically be extended to the next calendar day which is not a Saturday, Sunday or recognized holiday. Time is of the essence in this Agreement.

12.15 **No Third Party Beneficiaries**. The respective rights and obligations of the City Group and the Developer set forth in this Agreement are intended to be for the exclusive benefit of the Party to this Agreement enjoying such right or of the obligee of such obligation, respectively, and it is not the intention of either the City Group or the Developer to create, and this Agreement shall not operate or be construed to create, any third party beneficiary rights or other rights in favor or any person or entity other than the City Group and the Developer, respectively, and their respective permitted successors and assigns, if any, under the terms of this Agreement.

12.16 **Multiple Counterparts; Multiple Signature Pages**. This Agreement and any amendment or supplement thereto may be executed in two or more counterparts (each of which may bear the original signatures of all or some of the parties to this Agreement), and, if each of the parties to this Agreement has executed at least one such counterpart, then all such counterparts together shall constitute one and the same agreement with the same force and effect as if all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment or supplement thereto may be detached from any counterpart thereof without impairing the legal effect of any signatures thereon, and may be attached to another counterpart thereof identical in form thereto but having attached to it one or more additional counterparts of the same or other signature pages to this Agreement.

12.17 **Required Approvals and Consents**. Whenever pursuant to this Agreement any Party exercises any right given to it to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to a Party or is to be in a Party's discretion, the decision of such Party to approve or disapprove, to consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory, or acceptable or unacceptable in such Party's discretion shall (except as is otherwise specifically herein provided) be in the reasonable discretion of such Party and shall not be unreasonably withheld, conditioned or delayed.

12.18 **Capacity of Persons Acting on Behalf of City Group**. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of the City Group shall refer only to persons acting in the City's and JRC's capacity under this Agreement and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of the City Group's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of the City shall be deemed to be acting in connection with the performance of the City's Governmental Functions.

12.19 **No Limitation on City Group's Governmental Functions**. The Parties acknowledge that the City and JRC are each a Governmental Authority operating pursuant to their respective charters and statutory authority and that no representation, warranty, consent,

omission, approval or agreement in this Agreement by either the City or JRC shall be binding upon, constitute a waiver by or estop such respective Party from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities or privileges granted to such respective Party when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by the City or JRC is only with respect to matters arising in its respective capacity as a Party to this Agreement and expressly does not constitute a waiver of such respective Party's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance by such respective Party of its Governmental Functions.

12.20 **Waiver of Immunity**. To the extent permitted by Applicable Law, the City Group hereby voluntarily, irrevocably and unconditionally (a) agrees that the execution, delivery and performance by it of this Agreement constitute the private, proprietary and commercial acts of the City Group rather than public or governmental acts or Governmental Functions, (b) agrees that should any action or proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated hereunder, no immunity (sovereign or otherwise) from such actions or proceedings shall be claimed by or on behalf of itself or with respect to its assets and (c) waives any and all such right of immunity, on the grounds of sovereignty or other similar grounds, from suit or liability which it or its assets now has or may in the future acquire with regard to this Agreement.

12.21 **No Indirect Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS EMPLOYEES, OFFICERS, OR AGENTS ACTING IN THEIR OFFICIAL CAPACITY, AFFILIATES OR RELATED PARTIES; PROVIDED THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

12.22 **Rules of Usage**. The following rules of usage still apply to this Agreement:

(a) "Include", "includes" and "including" shall be deemed to be followed by ", but not limited to," whether or not they are in fact followed by such words or words of like import.

(b) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(c) Any agreement, instrument or Applicable Laws means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case

of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(d) References to a person are also to its permitted successors and assigns.

(e) Any term defined by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(f) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument are to exhibits or appendices attached to such instrument or agreement.

(g) Pronouns, whenever used in this Agreement and of whatever gender, shall include natural persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(h) References to any gender include, unless the context otherwise requires, references to all genders.

(i) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(j) "Shall" and "will" have equal force and effect.

(k) Unless otherwise specified, all references to a specific time of calendar day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Joplin, Missouri.

(l) References to "$" or to "dollars" shall mean the lawful currency of the United States of America.

12.23 **Interpretation and Reliance**. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City Group and the Developer have executed this Agreement to be effective as of the date first above written.

"CITY"

CITY OF JOPLIN, MISSOURI,

By: _____
Name: R Mark Rohr
Title: City Manager

ATTEST:

Barbara L Hogelin
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Brian W. Head, City Attorney

"JRC"

JOPLIN REDEVELOPMENT CORPORATION, INC., an urban redevelopment corporation organized under the Missouri Urban Redevelopment Corporations Law

By: _____
Name: Ron Darby
Title: Chairman

"DEVELOPER"

WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P., a Texas limited partnership

By: Wallace Bajjali Management, LLC, its general partner

By: _____
Name: DAVID A. WALLACE
Title: CEO

APPENDIX A

GLOSSARY OF DEFINED TERMS

"Affiliate" of any Person shall mean any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

"Approval," "Approve" or "Approved" means (a) with respect to any item or matter for which the approval of the City Group or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by the City Group pursuant to a written instrument executed by the City Group or City Representative, as applicable, delivered to the Developer, and shall not include any implied or imputed approval, and no approval by the City Group or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any the City Group Code or Governmental Functions of the City Group, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of the Developer is required under the terms of this Agreement, the specific approval of such item or matter by the Developer or the Developer Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of the Developer or the Developer Representative, as permitted pursuant to the terms of this Agreement, and delivered to the City Group, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other person is required under the terms of this Agreement, the specific approval of such item or matter by such person pursuant to a written instrument executed by a duly authorized representative of such person and delivered to the City Group or the Developer, as applicable, and shall not include any implied or imputed approval.

"Applicable Laws" shall mean any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include but not be limited to all the City Group Codes, Environmental Laws and any applicable Federal wage requirements. The Developer acknowledges that there may be certain "Applicable Laws" that apply to the Master Plan as a result of the City Group being involved in its development.

"Budget" shall have the meaning set forth in Section 4.1 of this Agreement.

"CART" shall have the meaning set forth in the recitals of this Agreement.

"City" shall have the meaning set forth in the recitals of this Agreement.

"City Controlled Entity" shall mean any entity created by the City or the JRC in which the City or the JRC has the power to appoint the majority of the members of the board of directors or the legal authority to control the actions of such entity.

"City Council" shall mean the City Council of the City of Joplin, Missouri.

"City Group" shall have the meaning set forth in the recitals of this Agreement.

"City Group Representative" shall have the meaning set forth in Section 2.1 of this Agreement.

"City Participant Development Agreements" shall have the meaning set forth in Section 10.2 of this Agreement.

"Completion Date" shall mean, with respect to any portion of the Master Plan, the earlier to occur of (a) sixty (60) days after the date the Developer notifies the City that a portion of the Master Plan is complete and the Developer is in a position to present such portion of Master Plan formally to the City at a meeting of City Council, (b) the date City Council takes formal action to approve such portion of the Master Plan in its entirety by delivering Formal Acceptance and (c) the date City Council takes formal action to reject all or any portion of such presented portion of the Master Plan.

"Default Rate" shall mean, on any particular date or for any particular period, that annual rate of interest, calculated on the basis of a 360 day year, which is the lesser of (a) the maximum non-usurious rate allowed by applicable law, or (b) that variable rate which is equal to the Prime Rate (as hereinafter defined) in effect on such date or during such period, plus two percent (2%) compounded monthly (and the Default Rate shall change with, and be effective as of the same date as, any changes in the Prime Rate).

"Development Fee" shall have the meaning set forth in Section 10.2 of this Agreement.

"Developer Representative" shall have the meaning set forth in Section 2.2 pf this Agreement.

"EDR" shall mean the Extended Disaster Recovery Area that is commonly defined by the City as the area of devastation caused by the May 22, 2011 tornado.

"Effective Date" shall have the meaning set forth in the recitals of this Agreement.

"Environmental Law(s)" shall mean any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of

chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16. U.S.C. §§ 1531 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

"Events of Default" shall mean and include those events set forth in Section 8.3(a)(i) through Section 8.3(a)(v) of this Agreement.

"Final Development Agreement(s)" shall mean one, or more, agreements between the City Group (or any one of them) and the Developer and/or the Developer's co-development partners, addressing the relative responsibilities of the parties as to the actual development, or redevelopment, of a specific Project within the Redevelopment Area.

"Financial Assistance" shall mean any type of publicly funded financial assistance, including Tax Increment Financing (TIF), Sales Tax and Revenue Bonds (STAR), Neighborhood Revitalization Program (NRP), Housing Tax Credits (HTC), Industrial Revenue Bonds (IRBs), Community Development Block Grants (CDBG), Transportation Development Districts (TDD) or others as appropriate.

"Force Majeure" shall mean any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (vi) fires; (vii) actions or omissions of a Governmental Authority (including the actions of the City Group in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; *provided, however*, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location.

"Formal Acceptance" shall have the meaning described in Section 8.2 of this Agreement.

"Governmental Authority" or "Governmental Authorities" shall mean any or all, as applicable, Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation. The City Group shall not, in exercising its rights under this Agreement, be considered a Governmental Authority.

"Governmental Function" shall mean any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the City Group is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by the City Group of its obligations under this Agreement shall not be considered a "Governmental Function".

"Hazardous Materials" shall mean (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment including soil and construction debris that may contain any of the materials described in this definition.

"Improper Action" shall mean any act constituting fraud, gross negligence or willful misconduct, or a material breach of any provision of this Agreement.

"JRC" shall have the meaning set forth in the recitals of this Agreement.

"Master Plan" shall have the meaning set forth in the recitals of this Agreement.

"Notice" shall mean (for convenience, severally and collectively) any notice, statement, communication, request, reply or advice in this Agreement provided or permitted to be given, made or accepted.

"Owner's Representative Fee" hall have the meaning set forth in Section 10.1(e) of this Agreement.

"Predevelopment Services" shall have the meaning set forth in Section 3.1 of this Agreement.

"Prime Rate" shall mean that annual rate of interest announced by JPMorgan Chase Bank, N.A., a national banking association (or its successor) from time to time, as its prime, base or reference rate of interest to borrowers (and which may not be the lowest rate of interest offered to borrowers by such institution).

"Progress Schedule" shall have the meaning set forth in Section 3.3(a) of this Agreement.

"Project" or "Projects" shall mean the development or redevelopment of a Site within the Redevelopment Area for a purpose described in, and in accordance with, the Master Plan.

"Project Costs" means all documented, out-of-pocket, third party costs and expenses incurred or to be incurred by any applicable developer (which may include the Developer) in order for such developer to fulfill its obligations with respect to the design, construction and development of any Project, including (a) the cost of all infrastructure, buildings, improvements, landscaping, furniture, fixtures, equipment and other personal property, (b) construction, architectural, engineering and design costs and fees, (c) legal fees, (d) development fees, (e) permit and approval fees payable to Governmental Authorities, (f) title examination and surveying costs and (g) financing fees and other transactional costs; *provided, however,* in no event shall such costs and expenses include those that are paid or internally allocated to a developer or its Affiliate.

"Pursuit Costs" shall mean the Developer's costs and expenses related to the creation of the Master Plan, the Developer's presentation of the Master Plan to City Council and the performance by the Developer's of the Predevelopment Services hereunder, which are set forth in the Budget and shall include: (a) all third party fees, including all testing, modeling, architectural, engineering, surveying, planning and consultant fees (including the costs associated with drawings and specifications related to creating the Master Plan); (b) costs of (or rentals for) equipment and supplies, (c) printing costs; (d) taxes (including, ad valorem real property taxes, and sales, use, gross receipts or similar taxes related to the Predevelopment Services); (e) legal expenses of attorneys providing legal services to the Developer in connection with the Predevelopment Services and/or this Agreement; (f) the fees and disbursements of third party accountants providing accounting, auditing and tax return preparation services to the Developer in connection with the Predevelopment Services and/or this Agreement; (i) wages and salaries of personnel of the Developer providing the Predevelopment Services; (j) travel and travel-related expenses of the Developer's personnel consistent with the City's adopted travel policy in any instance in which travel is required by the Developer's personnel in order for the Developer to provide the Predevelopment Services; (k) all out-of-pocket costs and expenses incurred by the Developer in connection with providing the Predevelopment Services and (1) all other fees, costs and expenses necessarily incurred in the proper performance of the Predevelopment Services. Notwithstanding the foregoing, absent the City Group's written consent, the City Group shall not be responsible for reimbursing the Developer for costs and expenses not included within the scope of the categories of expenses included in the Budget, nor, absent the City Group's written consent, shall the City Group be responsible for reimbursing the Developer for Pursuit Costs in excess of the total amount set forth in the Budget. To the extent that it is applicable, the Developer shall follow the City's adopted purchasing policies and procedures for the purchase of goods included within this definition of Pursuit Costs.

"Qualified Advisor" means a person or entity who provides services similar in scope, size and complexity to the services to be performed seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected

from a skilled and experienced person or entity providing services similar to the services to be performed complying with all Applicable Laws and engaged in the same type of undertaking.

"Reasonable and Prudent Developer" means a person or entity who provides services similar in scope, size and complexity to the Predevelopment Services seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or entity providing services similar to the Predevelopment Services complying with all Applicable Laws and engaged in the same type of undertaking.

"Redevelopment Area" shall mean the EDR area directly impacted by the May 22, 2011 storm event. Further, the area will also include the downtown area as well as the Main Street between downtown and 20th street and the five block area either side of Main connecting the downtown to 20th street and other locations as mutually agreed to by the parties. Exhibit A attached hereto and made a part hereof is a visual representation of the Redevelopment Area;

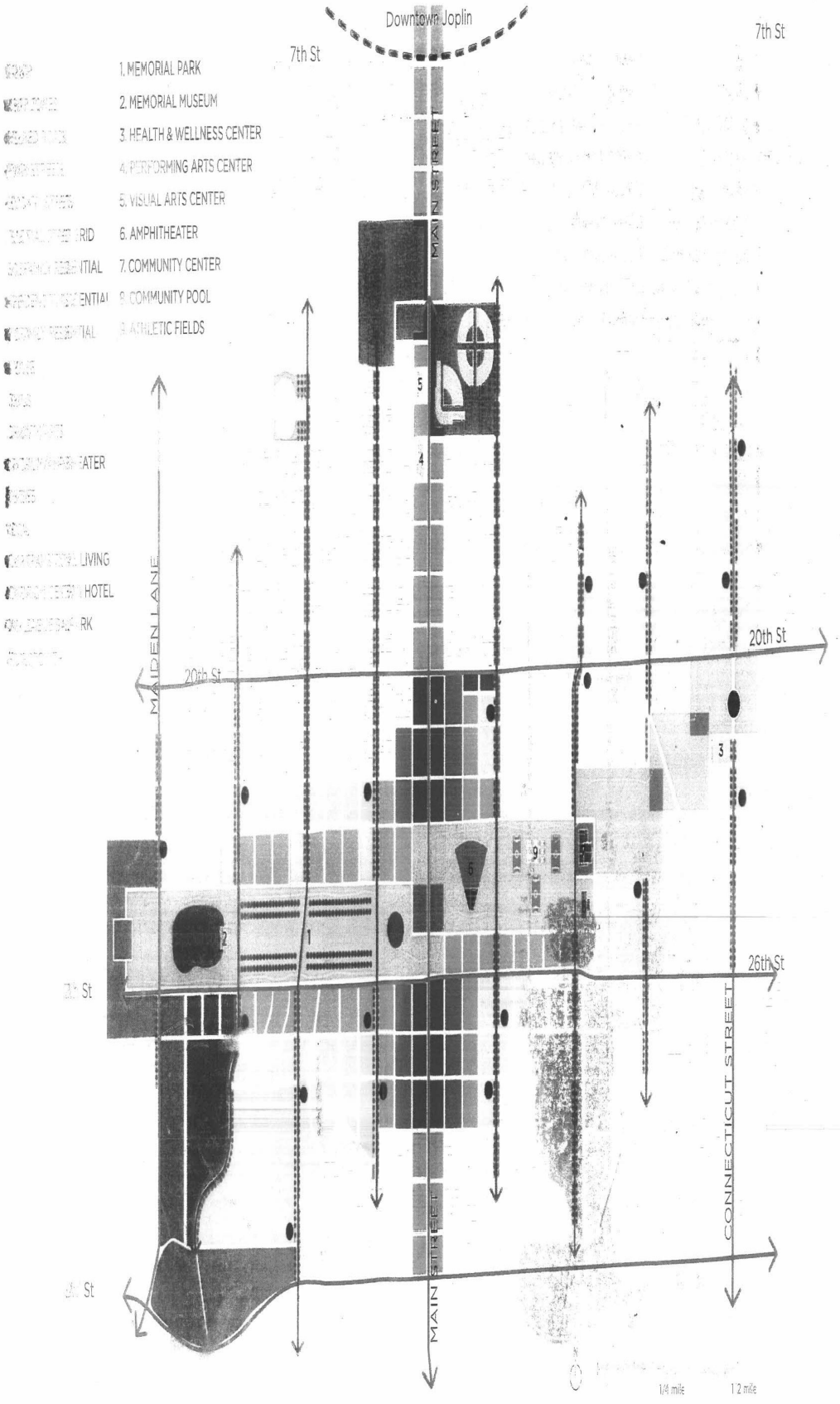
"Site" shall mean a specifically identified tract, upon which a proposed Project is to be developed, or redeveloped.

"Term" shall have the meaning set forth in Section 8.1 of this Agreement.

EXHIBIT A
TO MASTER PREDEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION OF REDEVELOPMENT AREA

See attached _____ (____) pages


1. MEMORIAL PARK
2. MEMORIAL MUSEUM
3. HEALTH & WELLNESS CENTER
4. PERFORMING ARTS CENTER
5. VISUAL ARTS CENTER
6. AMPHITHEATER
7. COMMUNITY CENTER
8. COMMUNITY POOL
9. ATHLETIC FIELDS
Downtown Joplin
7th St
7th St
MAIN STREET
MAIDEN LANE
20th St
20th St
26th St
CONNECTICUT STREET
MAIN STREET
1/4 mile
1/2 mile

SCHEDULE 1

CITY'S INSURANCE REQUIREMENTS

(a) Worker's Compensation Insurance and Employer's Liability Insurance covering employees or agents of the City Group, with such coverage to be in compliance with all Applicable Laws and with the following limits:

Workers Compensation: Statutory
Employer's Liability: $400,000 Per Occurrence (Minimum)

(b) Commercial General Liability coverage with minimum limits of liability of not less than $1,000,000 per occurrence/aggregate combined single limit for bodily injury and property damage. This policy shall be endorsed to provide coverage for: contractual liability and products and completed operations. General Aggregate Limit $2,000,000

(c) Comprehensive Automobile Liability coverage covering all owned, hired or non-owned vehicles with minimum limits of liability of not less than $1,000,000 per occurrence/aggregate combined single limit for bodily injury and property damage.

EXPERIENCE

DRAFT information:

Estimate of costs incurred and to be incurred

Administration Allocation	$360,000
Consultants, Professional Services, Legal Services and Studies	$1,328,000
Travel	$82,000
Wallace Bajjali Costs to Date	$240,000
Total Estimated Budget:	$2,010,000

Exhibit "B"

Additional Budget Detail by section

Administration Allocation **$360,000**

Consultants, Professional Services, Legal Services and Studies

1. Architect & Engineering Costs $350,000
2. Owner's Representative – Construction management planning and pre-design services $125,000
3. Market Assessments and void analysis–
   a. Commercial and Residential, Demographic trends, Specific Site Assessment $90,000
   b. Hospitality $55,000
   c. Concert and Event Market $70,000
   d. Minor League Baseball $50,000
4. Legal $275,000
5. Legislative Affairs $60,000
6. Public Communications and Education $198,000
7. Security and Public Safety Planning $15,000
8. Other (Appraisal work, misc consultants, etc.) $40,000

Travel **$82,000**

Projected project budget is only an estimate based upon Wallace Bajjali's current understanding of what is involved in the redevelopment of Joplin.

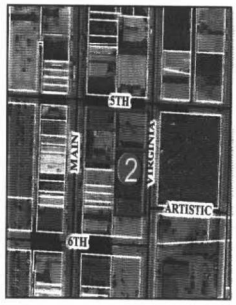
EXHIBIT C
TO MASTER PREDEVELOPMENT AGREEMENT

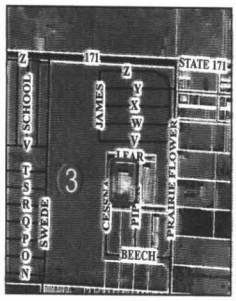
PROGRESS SCHEDULE

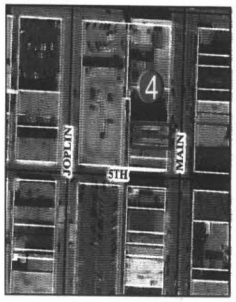
[TO BE DEVELOPED WITHIN SIXTY (60) DAYS AFTER THE EFFECTIVE DATE]

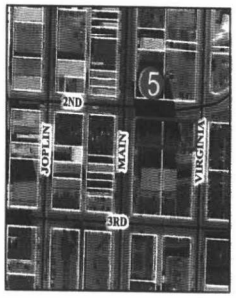
Joplin Tax Abatement Map

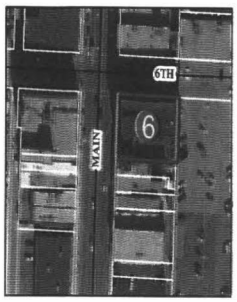


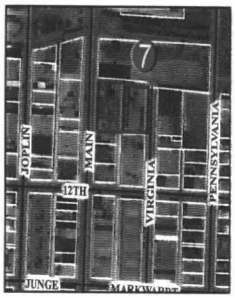


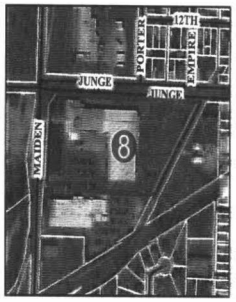


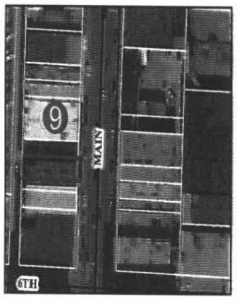


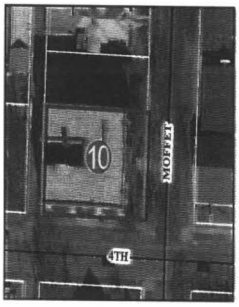


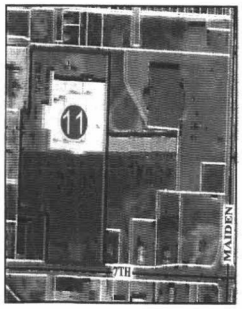


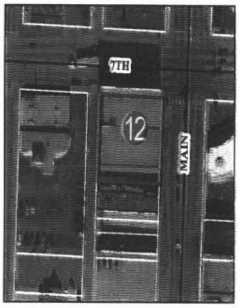


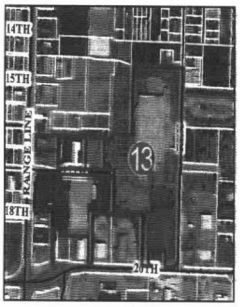


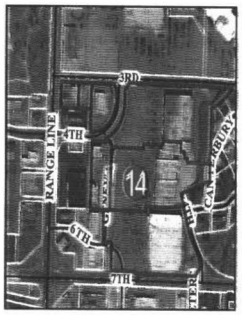












1. Carpe Diem Aviation
2. Chrisman
3. Clean Uniform
4. Columbia
5. Messenger Tower
6. Frisco
7. Gryphon Building (Inter-State Grocer)
8. King Press
9. Koucky
10. Olivia Apartments
11. SST
12. Tri-State Engineering
13. 1717 Market Place TIF & TDD
14. North Park Crossing TIF

Exhibit "D"