

**DEVELOPMENT AGREEMENT, PURSUANT TO THE ILLINOIS TIF ACT, BETWEEN
KC DT II LLC, AND CITY OF LEBANON, ILLINOIS, FOR PPN# 05-30.0-200-018**

This Development Agreement (“Agreement”) is entered into by and between the City of Lebanon, an Illinois Municipal Corporation (“City”) and KC DT II LLC (“Developer”). City and Developer may hereinafter be referred to as “Parties,” or individually as “Party.” This Agreement will become effective when signed by both Parties, and when approved by the corporate authorities of the City (the “Effective Date”) via Ordinance:

PREAMBLE

WHEREAS, City is an Illinois municipal corporation pursuant to the laws and constitution of the State of Illinois with general powers as a unit of local government within its corporate limits; and

WHEREAS, City is authorized to provide certain incentives for economic development under 65 ILCS 5/11-74.4-1, *et seq.*, “The Tax Increment Allocation Redevelopment Act,” as amended (“TIF Act” or “Act”); and

WHEREAS, Developer may purchase:

PIN# 05-30.0-200-018

(hereinafter “Property”); and

WHEREAS, Developer has submitted a “City of Lebanon – Application for TIF Project” for a Dollar Tree retail store (*See Exhibit A*); and

WHEREAS, Developer proposes to purchase and develop the Property (*See Exhibit A*); and

WHEREAS, City wishes to encourage Developer to purchase and develop the Property, and assist Developer with TIF Act costs, if eligible under the TIF Act (as provided by Developer):

1. Property acquisition
2. Financing costs
3. property studies (survey, plans and specifications)
4. site preparation (excavation, utilities, grading, foundations, paving of road / drives / parking lot
5. landscaping
6. “ground down” construction needs as defined by the TIF Act

(*See Exhibit A*); and

WHEREAS, Developer estimates the total costs for the purchase and development of the Property to be \$1,820,000 (*See Exhibit A*; hereinafter “Project”); and

WHEREAS, the Property is located within the corporate boundaries of City, and within the

City's TIF #1 District ("TIF #1"); and

WHEREAS, because the Property is located within City's TIF #1, the Project is eligible for reimbursement of certain expenditures related to the purchase and development of the Property pursuant to the Illinois TIF Act; and

WHEREAS, to ensure the Project is constructed in a manner consistent with City's applicable ordinances and regulations, City and Developer deem it in their mutual interests to enter into this Agreement with regard to any conditions or other factors affecting the health, safety, general welfare, and economic welfare of City residents and users of the Property; and

WHEREAS, the Project at the Property will enhance property values, create jobs, facilitate City's TIF #1 growth, improve exterior aesthetics, improve interior aesthetics, and otherwise benefit and protect the health, safety, general welfare, and economic welfare of City residents; and

WHEREAS, Developer has informed City, and City hereby specifically finds, that without the financial support that may be provided to reimburse some of the Project costs, the Project is not financially feasible, and the Project will not move forward; and

WHEREAS, the Parties agree that all Project costs are estimates, all possible reimbursements for Project costs from City are estimates, and any actual reimbursements will be governed by the TIF Act and this Agreement between the Parties; and

WHEREAS, City has determined the Project is consistent with the objectives of the City's Comprehensive Plan, and it is in the best interest of City to promote the purchase and development of the Property, and help facilitate development in City's TIF #1, through the use of City funds pursuant to the Act.

NOW, THEREFORE, in consideration of the premises and agreements set forth below, the Parties, for and in consideration of the representations relative to the proposed improvements to the Property by the Developer, hereby agree as follows:

Section 1. Incorporation of Recitals. The Parties agree that all of the recitals contained in the Preambles to this Agreement are true and correct, and said recitals are hereby incorporated into the Agreement as though they were fully set forth in this Section 1.

Section 2. Obligation of the Developer. Upon the approval by City of the Agreement, Developer shall proceed with the Project as described above. The Project shall be substantially complete within twenty-four (24) months of the date of approval by City of this Agreement. Any extension of time permitted for Developer to substantially complete the Project pursuant to the Agreement shall be agreed to in writing by both Parties. Specifically, Developer agrees as follows:

1. Developer will complete the Project, including construction and improvements, in accordance with this Agreement, and the drawings and site plans shall be submitted to City for review. This includes both the interior and exterior construction and improvements.
2. Developer will obtain all building and zoning permits in association with the Project, including permits for construction, repair, demolition, and/or renovation on the Property,

consistent with the City's most recently adopted Building Code requirements. City building code officials will be available to respond promptly to whether any proposed change will require a permit so that Developer can move forward with said work in a timely manner.

3. City shall be entitled to a comprehensive inspection of the Property for the purpose of identifying potential fire safety, electric, plumbing and general building safety concerns to ensure the health, safety and welfare of the general public. City Fire and Building Inspection staff can assist Developer in prioritizing any list of concerns.

4. Developer is fully responsible for identifying and mitigating any building-related concerns, or any other environmental issues with the Property.

5. Developer understands and agrees all City Zoning Ordinances, Land Development Codes, Landscape and Screening Codes, Building Code requirements and other City ordinances not specifically waived by this Agreement shall remain in full force and effect.

Section 3. Obligation of City.

The total dollar amount of economic incentives shall not exceed 20% of Developer's estimated Project costs of \$1,820,000. As a result, the maximum City approved TIF #1 incentives eligible to be paid to Developer would be \$364,000.00. This maximum is calculated based on 20% of the estimated City approved eligible project costs in the Developer application (20% x \$1,820,000)

The Parties understand and agree TIF #1 is set to expire twenty-three (23) years from creation on April 23, 2018, expiring April 22, 2041. As a result, City agrees to provide assistance to the Developer under this Agreement until the date of expiration of April 22, 2041, the end of TIF #1 as it is currently established, or until the aforementioned cap is reached, or until there are no additional TIF eligible expenses to reimburse under the TIF Act, whichever occurs first.

If any of the dates stated in this Agreement regarding the beginning or end of TIF #1 are not stated correctly, the legal dates established and confirmed by St. Clair County, IL will control. Only incentive money from the TIF #1 fund will be paid out as an incentive for this project, and there is no cause of action for breach of this agreement if the creation and end dates for TIF #1 are incorrectly stated herein.

It is the sole responsibility of Developer to ensure the Property is wholly located within TIF #1 and is eligible for any TIF #1 payments.

Funding assistance is broken down as follows:

- a. Total Estimated TIF #1 District Eligible Costs: \$1,820,000.00
- b. The City may reimburse 50% of the City's portion of property taxes from the incremental EAV generated by the purchase and development of the Property (reimbursements for expenses that qualify for payment under the TIF Act) up to the end of TIF #1 (in approximately 2041), or until the maximum funding amount is reached in

combination with any other funding assistance from City, or until there are no additional TIF eligible expenses to reimburse under the TIF Act, whichever occurs first:

1) The present base EAV, as provided by Developer, for assessment year 2022 is \$222,000.

2) Developer's estimated EAV after redevelopment and completion of the Project is \$25,000.00.

3) Based on Developer's estimate, the estimated EAV increase is estimated to be \$24,778.00 upon completion of the Project.

4) 50% of the property taxes from the estimated increase in EAV is \$12,389.00.

5) City's estimated payment to Developer annually, for up to eighteen (18) years, assuming there are eighteen (18) years left in the life of TIF #1, is: \$12,389.00 annually.

6) City's total estimated payment to Developer, for up to eighteen (18) years, assuming there are eighteen (18) years left in the life of TIF #1, is: \$223,002.00.

7) Developer shall begin to qualify for reimbursement from City under the TIF Act in the year when the Project is completed as to be determined solely at the discretion of City.

c. Under no circumstances shall City be responsible for payments to Developer for any reimbursements not eligible for payment under the TIF Act, the funds for reimbursement under the TIF Act are collected by St. Clair County, IL and are what will be used for all mathematical calculations for reimbursement to Developer under the TIF Act, and all payments shall cease at the end of life for TIF #1, or 2041.

d. Developer's total incentive from City's TIF #1 shall not exceed 20% of the estimated Project costs of \$1,820,000.00, or \$364,000.00.

e. Under no circumstances shall Developer's reimbursement of Project costs from City exceed 20% in combination with any and all other City economic incentives.

Section 4. Reimbursement to Developer under the TIF Act.

a. Developer shall submit to the City Clerk a written statement in the form of a formal letter and all applicable receipts setting forth the amount of TIF act reimbursable costs incurred by the Developer to complete the Project. Each Request shall be accompanied by such bills, invoices, lien waivers or other evidence City may reasonably require for documenting Developer's TIF act eligible costs incurred for the Project. These Requests shall be submitted after January 1st of each year. Developer may continue to provide Requests until all TIF act eligible Project costs have been incurred and the Project is completed. City reserves the right to request any

information from Developer deemed necessary by City to verify any information associated with this Agreement. City reserves the right to deny reimbursement for any TIF act eligible costs to Developer not deemed eligible for reimbursement according to Illinois law.

- b. Reimbursement of approved TIF act Project costs shall be made annually within sixty (60) days upon receipt from the County of the property tax proceeds for the applicable tax year. Approved TIF act Project costs shall only be reimbursed to the extent that tax increment is generated by the Property and if there are monies available for such purpose. To the extent the State of Illinois modifies the process for collection of property taxes and payment to City during the term of this agreement, and money is not available to reimburse Developer for approved Project costs due to said change, such costs shall be reimbursed in subsequent years and as agreed to in writing by Developer and City.
- c. Prior to making an annual payment to Developer for reimbursement of approved redevelopment TIF act Project costs, Developer shall provide evidence that the real property tax bill for the Property for the applicable tax year has been paid in full along with the previous year's state of Illinois sales tax returns.
- d. Developer must supply City with sales tax records each year from the business or businesses generating sales taxes at the Property, and show proof that all sales taxes have been paid in full.
- e. Prior to making an annual payment to Developer for reimbursement of approved TIF Act Project costs, Developer shall provide evidence of the previous year's State of Illinois sales tax returns for the Property.
- f. The City Accountant shall maintain an account of all payments to Developer under this Agreement and may set up sub-accounts to track the tax increment and payments made to Developer for this Property.

CITY'S OBLIGATION TO REIMBURSE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM THE CITY'S PORTION OF THE INCREMENTAL TAXES GENERATED BY THE PROPERTY AND DEPOSITED IN CITY'S FUNDS FROM TIME TO TIME AND SHALL NOT BE A GENERAL OBLIGATION OF CITY OR SECURED BY THE FULL FAITH AND CREDIT OF CITY.

- g. City's obligations to Developer pursuant to the Agreement shall terminate upon the occurrence of any of the following:
 - a. Voluntary or involuntary bankruptcy of Developer;
 - b. Voluntary or involuntary closure of the business at the Property.
 - c. Substantial change in the nature of the business at the Property without the City's written approval;

- d. To protect City's reputation and ability to transact business, City reserves the right to terminate the Agreement if Developer's interest in the Property (or a change of ownership of more than 50% of the shares of stock in the corporation, or a change in the membership of more than 50% of the LLC) changes without City's written approval. This clause can only be exercised if the sale or transfer of ownership/membership includes "UNDESIRABLE" parties that could have a demonstrable, public, and material impact on the business and reputation of the city.

Undesirable examples include new ownership that are

- i. Felons;
- ii. Terrorists;
- iii. Former, current, or past Illinois public political figures;
- iv. Litigants against the City;
- v. Individuals the city has taken legal action against in the preceding 5 years.

Section 5. Indemnification. Developer shall indemnify and hold harmless City, its agents, officers, lawyers, and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and attorneys' fees) which may arise directly or indirectly from: (i) the failure of Developer or any contractor, subcontractor or agent or employee thereof to timely pay any contractor, subcontractor, laborer or material man; (ii) any default or breach of the terms of this Agreement by Developer; (iii) any negligence, or reckless or willful misconduct of Developer or any contractor, subcontractor or agent or employee thereof working on the Project; (iv) any claim brought against City arising in any way from this Agreement or the Project. Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against City, its agents, officers, officials, lawyers, or employees in any such action, Developer shall, at its expense, satisfy and discharge the same. This paragraph shall not apply, and Developer shall have no obligation whatsoever, with respect to any willful misconduct on the part of City or any of its officers, agents, employees or contractors. According to Illinois law, City has statutory tort immunity.

In no way limiting the foregoing, Developer shall also indemnify and hold harmless City, its agents, officers and employees against all damages, claims, suits, liabilities, judgments, fines, penalties, costs and expenses (including attorneys' fees) which may arise directly or indirectly from any violation of the Illinois Prevailing wage Act, 820 ILCS 130/0.01 *et. seq.*, in connection with the Project.

Section 6. Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or conditions of this Agreement by either Party or any successor or assign, the defaulting or breaching Party (or successor or assign) shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach as follows: (a) in the event of a nonmonetary default, within thirty (30) days after receipt of notice, commence to cure or remedy such default, and (b) in the event of a monetary default, within ten (10) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or

remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching Party. If either Party shall prevail in any court proceeding to enforce any term, covenant or condition hereof, the non-prevailing Party shall reimburse the prevailing Party its costs and reasonable attorneys' fees on account of such proceeding.

Section 7. Assignment. This Agreement may not be assigned by Developer without prior written approval of City.

Section 8. Partial Invalidity. If any section, subsection, term or provision of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section subsection, term or provision of this Agreement or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 9. Termination of Agreement. Developer may opt out of this Agreement following written notice of at least sixty (60) days. If Developer opts out of this Agreement, Developer shall return all monies paid by City to Developer in the preceding calendar year pursuant to this Agreement within sixty (60) days of notification of opting out.

City reserves the right to opt out of this Agreement, with sixty (60) days' notice to Developer, should Developer not perform pursuant to this Agreement. In the event City opts out of this Agreement, Developer shall return any monies paid by City to Developer in the preceding calendar year pursuant to this agreement within sixty (60) days of notification of opting out.

In the event of an opt out by either Party, Developer's failure to return all monies paid by City in the preceding calendar year within sixty (60) days shall be deemed a breach of this Agreement by Developer, and City reserves all rights at law and equity to recover monies paid by City to Developer, including costs of collection (Court Costs, Attorneys' Fees, Interest at 9% per annum, any other costs associated with collection).

Section 10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. No representation or covenant made by either Party shall be binding unless contained in this agreement or subsequent written amendments hereto agreed upon by both Parties.

Section 11. Notices. All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, if emailed, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:


To the Developer:

KC DT II LLC
Attn: Jason Hobick
4706 Broadway, Suite 240
Kansas City, MO 64112

To the City:

City of Lebanon
Attention: Mayor Pro Tem
312 West St. Louis Street
Lebanon, IL 62254

CITY OF LEBANON, ILLINOIS:



Mayor Pro Tem

KC DT II LLC

Jason Hobick, Agent for KC DT II LLC