

**AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT FOR THE EXPANSION OF THE BUTTERFLY PALACE BETWEEN THE CITY AND R B D MARKETING, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS RELATED THERETO.**

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**WHEREAS**, R B D Marketing, LLC (“Developer”) has proposed the use of a Community Improvement District, Sales Tax Revenue Reimbursement Agreement, and a Chapter 100 Plan to expand the currently existing The Butterfly Palace, located within the City of Branson (“City”); and

**WHEREAS**, the City and its citizens pride themselves on the City’s world-famous tourist attractions and understand the economic and cultural value that the tourism industry provides to the City and its visitors and citizens; and

**WHEREAS**, Missouri courts have consistently recognized that the Board of Aldermen determines what a public purpose may be and that public purposes include the economic development of the City and the safety, happiness, and welfare of the citizens; and

**WHEREAS**, The Butterfly Palace is a unique tourist attraction which houses over 1000 live butterflies and must comply with strict USDA regulations to maintain operations; and

**WHEREAS**, The Butterfly Palace draws visitors from across the nation to the City of Branson, where they are likely to patronize hotels, restaurants, other businesses, and other tourism attractions, which would result in additional tax revenue to the City and other revenue to such businesses; and

**WHEREAS**, the City appreciates the value that The Butterfly Palace has brought to the City by attracting tourists and visitors to the City and appreciates The Butterfly Palace’s desire to evolve and update its facilities to accommodate an increase in visitors and allow those visitors to take part in new exhibits, experiences and events at The Butterfly Palace; and

**WHEREAS**, The Butterfly Palace seeks to update its facilities by the expansion of the Aviary, the development of a parking facility, and the development of new event and exhibition spaces; and

**WHEREAS**, The Butterfly Palace estimates that the expansion of facilities will increase its daily capacity for visitors from 950 visitors to 1350 visitors and that the Aviary will be expanded by 32%; and

**WHEREAS**, to maintain its USDA certification, The Butterfly Palace must comply with USDA regulations, which lead to unique and substantial costs associated with the expansion of its facilities; and

**WHEREAS**, the Developer has provided an affidavit in support of the public purpose affidavit of the expansion of The Butterfly Palace, attached hereto as **Exhibit B**; and

**WHEREAS**, the Board of Aldermen hereby finds that The Butterfly Palace has contributed to the economic development of the City and to the tourism industry of the City and that the expansion of its facilities will continue and increase such contributions to the City; and

**WHEREAS**, the Board of Aldermen hereby finds that the use of economic development incentives as

described in the Development Agreement is a public purpose and contributes to the continued economic development of the City and the continued development of the City's tourism industry, which is uniquely important to the City and aids in the City's mission of providing services to the benefit of the health, welfare, and safety of the City's citizens; and

**WHEREAS**, the Board of Aldermen hereby finds that The Butterfly Palace is a valued part of the City's tourism industry and its expansion and the use of economic development incentives to support the expansion is a public purpose which will benefit the City and will contribute to the health, welfare, and safety of the City's citizens; and

**WHEREAS**, the City and the Developer have agreed upon terms and conditions necessary to carry out the goals and objectives of the Developer and desire to enter into a Development Agreement ("Development Agreement") between the City and the Developer, attached hereto as Exhibit A.

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

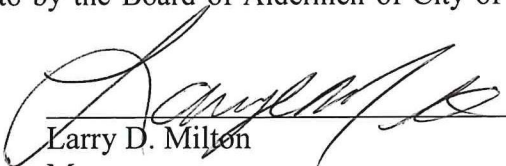
Section 1: The Development Agreement by and between the City and the Developer, a copy of which is attached hereto as Exhibit A, is hereby approved and adopted. The Board of Aldermen hereby finds that use of the economic development incentives contemplated under the Development Agreement will serve a public purpose as described above and will contribute to the economic development of the City, the continued development of the City's tourism industry, and to the health, welfare, and safety of the City's citizens.

Section 2: The Mayor is authorized to execute the Development Agreement as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Development Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 3: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 13<sup>th</sup> day of May, 2025.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 27<sup>th</sup> day of May, 2025.

  
Larry D. Milton  
Mayor

ATTEST:

APPROVED AS TO FORM:

  
Hillary Briand  
City Clerk

  
City Attorney



**DEVELOPMENT AGREEMENT FOR  
THE EXPANSION OF THE BUTTERFLY PALACE**

between

**THE CITY OF BRANSON, MISSOURI**

and

**R B D MARKETING, LLC**

## **Table of Contents**

1. Recitals and Exhibits .....	1
2. Rules of Interpretation .....	1
3. Definitions .....	2
4. Redevelopment Project.....	5
5. Redevelopment Project Improvements.....	5
6. Redevelopment Schedule. ....	5
7. Design Criteria and Review Procedures for Redevelopment Project Improvements.....	6
8. Control of Project. ....	6
9. Use of the Redevelopment Project Property.....	7
10. Certificate of Completion and Compliance. ....	7
11. Actions Contesting this Agreement and Related Ordinances and Agreements.....	8
12. Funding Sources and Uses of Funds.....	9
13. Community Improvement District.....	11
14. Conditions Precedent to Developer's Duties.....	12
15. Conditions Precedent to City's Duties.....	12
16. CID Revenue Fund and Sales Tax Revenue Fund .....	12
17. Disbursements from CID Revenue Fund.....	13
18. Reimbursable Project Cost Certification. ....	13
19. Payment of Project Costs - "As Collected" Basis; Bonds. ....	15
20. Reserved. ....	16
21. Sale or Lease of Redevelopment Project Property .....	16
22. Disposition of Redevelopment Project Property. ....	16
23. Continuing Disclosure and Progress Reports. ....	17
24. Compliance with Laws .....	18
25. Authorized Employees .....	19
26. Assignment of Developer's Obligations.....	19
27. Representations and Warranties .....	19
28. Indemnification.....	22
29. Insurance.....	24
30. Option to Restore.....	25
31. Breach-Compliance. ....	25
32. Excusable Delays.....	26
33. Notice.....	27
34. Modification .....	27
35. Effective Date and Term.....	27
36. Recording.....	27
37. Applicable Law.....	27
38. Covenant Running with the Land .....	27
39. Administrative Costs and Expenses. ....	28
40. Validity and Severability .....	29
41. Time and Performance are of the Essence.....	29
42. City's Legislative Powers .....	29
43. Relationship of Parties.....	29
44. Good Faith; Consent or Approval .....	29

## **Exhibits**

- A Legal Description of Redevelopment Project Property
- B Map of the Redevelopment Project Property and Site Plans
- C Redevelopment Project Improvements
- D Redevelopment Schedule
- E Redevelopment Project Cost Budget
- F Form of Assignment and Assumption Agreement
- G Form of Affidavit of Work Authorization



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the “**Effective Date**”), by and between THE CITY OF BRANSON, MISSOURI, a fourth class city and political subdivision of the State of Missouri (the “**City**”), and R B D MARKETING, LLC, a Missouri limited liability corporation (the “**Developer**”).

### RECITALS

A. The Board of Aldermen of the City of Branson (the “**Board of Aldermen**”) adopted Ordinance No. \_\_\_\_\_ on May 27, 2025 approving this Agreement to expand The Butterfly Palace in Branson, Missouri. The economic development incentives requested by the Developer are the establishment of a Community Improvement District, a Sales Tax Revenue Reimbursement agreement, and the issuance of Chapter 100 bonds. Pursuant to the provisions of the CID Act, Chapter 100, RSMo., and City economic development policies, the Parties now set forth the terms and conditions of the Parties’ agreement to implement the incentives.

B. On or about April 24, 2025, the Petition to establish the Butterfly Palace Community Improvement District was filed with the City Clerk’s office (“**CID Petition**”). Notice of the public hearing was published in the *Branson Tri-Lakes News* on April 30, 2025 and April 7, 2025. Notice of the public hearing was mailed to property owners on April 25, 2025. A public hearing to consider the approval of the establishment of the Butterfly Palace Community Improvement District was held on May 13, 2025.

C. On or about April 18, 2025 the Plan for an Industrial Development Project and Cost-Benefit Analysis (“**Chapter 100 Plan**”) was filed with the City Clerk’s office. Notice of the Chapter 100 Plan was mailed to the statutorily required taxing jurisdictions on April 22, 2025. Meetings to consider the approval of the Chapter 100 Plan were held on May 13, 2025 and May 27, 2025.

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

1. Recitals and Exhibits. The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the CID Petition, the Cooperative Agreement, Chapter 100 Plan, and this Agreement as amended as of and including the date of this Agreement, form the basis of this Agreement and may be used to resolve ambiguity. In the event of any conflict between the provisions of this Agreement and any other documents related to the Plan previously prepared or executed, the provisions of this Agreement shall control.

2. Rules of Interpretation. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

A. The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications,

amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 34** of this Agreement.

B. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, limited liability companies, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

D. The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

E. All exhibits attached hereto and identified herein are incorporated herein by reference.

F. The provisions of the CID Petition and Chapter 100 Plan, copies of which are on file with the office of the City Clerk, the Cooperative Agreement, CID Act, and Chapter 100, as amended as of and including the date of this Agreement, are all hereby incorporated herein by reference and made a part of this Agreement.

3. **Definitions.** Unless otherwise noted, all capitalized words or terms used in this Agreement and defined in the CID Petition and Chapter 100 Plan shall have the meaning ascribed to them in the Plan. In the event of a conflict between meanings under the CID Petition and Chapter 100 Plan and under this Agreement, the terms of this Agreement shall govern. In addition, thereto and in addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise.

A. “**Affiliate**” or “**Related Entity**”, any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise, and shall be a related entity to R B D Marketing, LLC.

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

C. “CID,” the Butterfly Palace Community Improvement District to be formed pursuant to **Section 13**.

D. “CID Act,” the Missouri Community Improvement District Act, Sections 67.1401, RSMo, *et seq.*

E. “CID Costs,” those Redevelopment Project Costs as identified on **Exhibit E**, which may be reimbursed or funded from CID Revenue under the CID Act.

F. “CID Cooperative Agreement” or “Cooperative Agreement,” The agreement governing the administration of the CID agreed to by the City, the CID, and the Developer.

G. “CID Improvements,” the improvements within the Redevelopment Project Area which are eligible to be paid for or reimbursed with CID Revenue.

H. “CID Revenue,” the revenue generated by the CID Sales Tax.

I. “CID Revenue Fund,” the separate segregated ledger account established by the City into which the CID Revenue is to be recorded as deposited.

J. “CID Sales Tax” a one percent (1%) sales and use tax imposed by the CID on all taxable sales within the boundaries of the CID in accordance with the CID Act.

K. “City,” the City of Branson, Missouri.

L. “City Administrator,” the City Administrator of Branson, Missouri, or their designee.

M. “City Treasurer,” the Finance Director of Branson, Missouri, or their designee.

N. “County,” Taney County, Missouri.

O. “Developer,” R B D Marketing, a Missouri limited liability corporation, its successors and assigns.

P. “Financing Costs,” shall mean any interest under **Section 18.D**, and all costs reasonably incurred by the Developer in furtherance of the issuance of Private Loans or Obligations, including but not limited to interest, loan fees and points not exceeding one percent (1%) of the principal amount of the loan, loan origination fees not to exceed two percent (2%) of the principal amount of the loan, and interest payable to banks or similar financing institutions that are in the business of loaning money. Any costs related to the financing of non-Reimbursable Project Costs shall not be a Financing Cost or a Reimbursable Project Cost.

Q. “Land Use Approvals,” those approvals required pursuant to the City’s zoning ordinance and subdivision regulations, including but not limited to site plan approvals, which are required for the construction of the Redevelopment Project.



R. “Legal Requirements,” any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision ordinances, building codes, and property maintenance codes.

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

T. “Private Loans,” private loans obtained by the Developer, or its successors, assigns or transferees, from third party private lending institutions to fund Reimbursable Project Costs.

U. “Redevelopment Project Cost Budget,” the budget setting forth the estimated Redevelopment Project Costs, and identifying those Redevelopment Project Costs to be funded or reimbursed by CID Revenue and/or Sales Tax Revenue, attached hereto as **Exhibit E**.

V. “Redevelopment Project Improvements,” the project improvements that Developer owns, whether solely or jointly, in whole or in part, or controls, or which are made on real property within the boundaries of the CID, as depicted on **Exhibit C**.

W. “Redevelopment Project Property,” the area legally described on **Exhibit A** attached hereto, including The Butterfly Palace structure and facilities, and is coterminous with the boundaries of the CID.

X. “Reimbursable Project Costs,” the costs of the Redevelopment Project Improvements which, pursuant to the applicable law and this Agreement are eligible for payment or reimbursement from either: (i) CID Revenue, or (ii) Sales Tax Revenue, as shown on **Exhibit E** and further described in **Section 18**.

Y. “Sales Tax Revenue,” The sales tax revenue collected pursuant to the City’s 1% general sales tax and generated by The Butterfly Palace after the issuance of a Certificate of Completion and Compliance for the Redevelopment Project Improvements that is in excess of the 1% City general sales tax revenue generated by The Butterfly Palace in the calendar year prior to the issuance of a Certificate of Completion and Compliance for the Redevelopment Project Improvements.

Z. “Sales Tax Revenue Fund,” the separate segregated ledger account established by the City into which the Sales Tax Revenue is to be recorded as deposited.

AA. “STR Costs,” those Redevelopment Project Costs as identified on Exhibit E, which may be reimbursed or funded from Sales Tax Revenue.

BB. “Site Plans,” the conceptual site plans generally depicting the Redevelopment Project Improvements attached hereto as **Exhibit B**.

4. Redevelopment Project Property. The Redevelopment Project Property consists of the area legally described on **Exhibit A** attached hereto. The Developer shall expand the existing The Butterfly Palace facility located at 4106 West 76 County Boulevard in Branson, Missouri in accordance with the Redevelopment Project Improvements.

5. Redevelopment Project Improvements.

A. The Redevelopment Project Improvements include i) the expansion of the existing aviary, which includes a complete roof replacement and storm shutter installation; ii) the development of a new third level to allow rooftop exhibits; iii) the development of an event center; iv) the development and maintenance of a new parking lot; v) the development of new, interactive exhibits; and vi) related improvements. The Redevelopment Project Improvements may not be changed, modified or amended except in accordance with the CID Act and this Agreement. The Developer shall cause the Redevelopment Project Property to be redeveloped through the construction and development of the Redevelopment Project Improvements, as generally shown on the Site Plans attached hereto as **Exhibit B**, which is subject to change as a result of the Land Use Approval and other governmental authority processes.

6. Redevelopment Schedule.

A. It is the intention of the parties that development activities for the Redevelopment Project be substantially commenced and completed on or before the dates set forth in **Exhibit D**, as may be reasonably amended from time to time, attached hereto and incorporated herein by reference (the “**Redevelopment Schedule**”). Developer shall cause to be constructed all Redevelopment Project Improvements, and shall cause to be completed all other development-related activities including, but not necessarily limited to design, land preparation, environmental evaluation and remediation, construction, management, maintenance and procurement of private financing in sufficient time to comply with the Redevelopment Schedule. Changes in the development program contemplated herein that require amendments to the CID Petition or Chapter 100 Plan (as determined by City) shall be processed in accordance with the CID Act and Chapter 100, RSMo., and changes in the development program contemplated herein that do not require a statutorily mandated CID Petition or Chapter 100 Plan amendment shall be made by agreement of the parties hereto. The parties hereto recognize and agree that market and other conditions may affect the Redevelopment Schedule. Therefore, the Redevelopment Schedule is subject to change and/or modification, with the written approval of the City Administrator and without action taken by the Board of Aldermen, which shall not be unreasonably conditioned, delayed, or withheld. Provided that, if any changes to the Redevelopment Schedule will only result in a delay of three (3) months or less to such applicable deadline, Developer shall only provide written notice to the City of such delay prior to the expiration of any applicable deadline and no approval by the City Administrator for such delay will be necessary. Only one such extension shall be allowed without the approval of the Board of Aldermen. Redevelopment Project Improvements will be

substantially complete in accordance with the Redevelopment Schedule such that the Redevelopment Project Improvements will be open for business in accordance with the Redevelopment Schedule; provided however that the Developer reserves the right to make improvements within the Redevelopment Project Property as set out in the Project Budget after the Redevelopment Project Improvements are open for business and may certify such costs as Reimbursable Project Costs in accordance with Section 18 without the necessity of amending the Project Schedule.

B. Any amendment to the CID Petition or Chapter 100 Plan that is approved by City as provided herein, which amendment contains changes to the Redevelopment Schedule provided herein, shall immediately operate and be deemed to be an amendment to the approved Redevelopment Schedule and the provisions of this Agreement. If as a result of solely the Developer's failure to timely complete its obligations under this Agreement and provided that the City has fulfilled all of the terms of this Agreement and provided that the delay has not been caused by event not otherwise in control of the Developer, City may provide written notice to Developer stating that the City intends to require Developer to appear before the Board of Aldermen to show cause why this Agreement shall not be terminated. Developer may, within thirty (30) days following its receipt of such notice, use commercially reasonable efforts to cure such failure to timely complete Developer's obligations under the Agreement or provide the City with written notice of the reasons why the Developer is unable to timely cure such failure. If the Developer has not completed the cure within thirty (30) days after receipt of such notice, the City may, in its sole reasonable discretion, require Developer to appear before the Board of Aldermen to show cause why this Agreement shall not be terminated in accordance with Section 31 hereof.

7. Design Criteria and Review Procedures for Redevelopment Project Improvements.

A. Developer shall comply with and follow, or cause to be complied with and followed, all controls and design criteria relating to exterior improvements as shall be, from time to time, established as a part of the CID Petition or this Agreement, and the Land Use Approvals in order to create an integrated, unified design. The Site Plans attached hereto do not relieve Developer of its obligation to comply with the City's Land Use Approvals, including the creation of development site plans subject to the review, revisions and approval by the City, in accordance with its normal site plan and/or building plan approval process, including meeting the requirements outlined in the City's zoning and construction ordinances.

B. Construction plans for the Redevelopment Project Improvements shall generally conform to the Site Plans. However, the Developer reserves the right to deviate from the Site Plan, as long as such deviations are in accordance with Section 7.A above and are in compliance with the CID Petition and the CID Act.

8. Control of Project.

A. Construction. Except as otherwise provided in this Agreement, Developer, along with any of Developer's lenders for Private Loans, shall have complete and exclusive



control over construction of the Redevelopment Project Improvements, subject, however, to all Legal Requirements. Notwithstanding the above, as to all parts of the Redevelopment Project Improvements, during the period they are being constructed by Developer, or its assigns, Developer, or its assigns, hereby grants to City, its agents and employees the right to enter at reasonable times for the purpose of inspecting the Redevelopment Project Improvements, but the City shall use best efforts to avoid disrupting the operations during business hours and provide reasonable notice to the Developer prior to exercising such rights, provided that the City may take any legal action authorized by law to enforce City Code.

B. Maintenance and Repair. Developer, at no cost to the City, at all times shall use commercially reasonable efforts to (1) maintain and operate, or caused to be maintained and operated, all Redevelopment Project Improvements and the Redevelopment Project Property in a manner similar to other similarly aged and similarly situated development projects in the boundary of the City of Branson; and (2) timely make all necessary repairs to and replacements and restorations of all parts of the Redevelopment Project Improvements and the Redevelopment Project Property; (3) keep the Redevelopment Project Improvements and Redevelopment Project Property in good condition, repair and appearance; and (4) maintain casualty insurance on the Redevelopment Project Improvements and the Redevelopment Project Property in accordance with the insurance coverage that has been required and approved by the Developer's lender for Private Loans.

9. Use of the Redevelopment Project Property. The City, at its sole discretion, may terminate this Agreement in or any portion thereof accordance with Section 31 if The Butterfly Palace ceases operations at the Redevelopment Project Property or if the Redevelopment Project Property is used for a primary purpose other than a tourism attraction featuring the exhibition of butterflies. This Section 9 shall not prohibit special events or other occasional uses at the Redevelopment Project Property so long as the primary purpose of the Redevelopment Project Property is to exhibit butterflies as a tourism attraction. For the duration of this Agreement and until Developer is reimbursed for all Reimbursable Project Costs, the Redevelopment Project Property shall not be used for any purposes that would damage or harm the City's reputation.

10. Certificate of Completion and Compliance.

A. Upon the completion of construction of any portion or phase of the Redevelopment Project Improvements, Developer shall submit a report certifying that the Redevelopment Project Improvements contained therein have been completed in substantial accordance with the CID Petition, this Agreement, and the Site Plans and that it is in substantial compliance with all other provisions of this Agreement. Developer shall, as part of the report, submit a certificate, certified by Developer, certifying that to the best of Developer's actual knowledge, the information contained therein is accurate, setting forth on an aggregate basis: (1) the total cost of completing the applicable Redevelopment Project Improvements and (2) Redevelopment Project Costs incurred which are eligible for reimbursement from CID Revenue and Sales Tax Revenue pursuant to this Agreement or which have been paid for or are to be funded or reimbursed. The City reserves the right, in its sole discretion, to request additional supporting documentation as necessary.

B. City may conduct an investigation, and if City determines that the Redevelopment Project Improvements have been completed in substantial accordance with the CID Petition, this Agreement, and the Site Plans as evidenced by a certificate of occupancy where appropriate and other applicable Legal Requirements, and that as of the date of Developer's certification request, all of Developer's duties pursuant to this Agreement have been performed, then the City shall issue a Certificate of Completion and Compliance for the Redevelopment Project Improvements. If City determines that the Redevelopment Project Improvements which are the subject of an investigation or review under this **Section 10.B** have not been completed in substantial accordance with the CID Petition, this Agreement or the Site Plans, or that Redevelopment Project Costs have not been incurred as certified, or that Developer is not in substantial compliance with the terms of this Agreement, then the City shall not issue a Certificate of Completion and Compliance and shall specify in writing to Developer the reason(s) for withholding such certification. Upon request of Developer, City shall hold a hearing at which Developer may present new and/or additional evidence.

(1) The issuance of a Certificate of Completion and Compliance for the Redevelopment Project Improvements by the City shall be a conclusive determination of the satisfaction of the covenants in this Agreement with respect to the obligations of Developer to timely complete the Redevelopment Project Improvements within the Redevelopment Project, but shall not prevent City from future action in the event of any subsequent default by Developer in the performance of any of its other obligations under this Agreement.

(2) The certificate issued by the City shall contain a description of the real property affected thereby and shall be in such form as will enable it to be accepted for recording in the Office of the Recorder of Deeds for Taney County, Missouri.

11. Actions Contesting this Agreement and Related Ordinances and Agreements. At any time during the effective period of this Agreement, if a third party brings an action (or raises a defense to an action filed by the City) against the City or the City's officials, agents, employees or representatives contesting the validity or legality of the ordinance establishing the CID, the CID Petition, the ordinance approving the Cooperative Agreement, the Cooperative Agreement, the ordinance approving the Chapter 100 Plan, the Chapter 100 Plan, the ordinances approving agreements related to the Chapter 100 Plan, the agreements related to the Chapter 100 Plan, the ordinance approving this Agreement, or this Agreement, the Developer shall assume the defense of such claim or action with counsel jointly determined by the Developer and the City, which shall include, but not necessarily be limited to, the City's special counsel for economic development matters, and pay the costs and attorney's fees of such counsel. Provided that, the Developer shall not be required to assume defense of any claim or action against the City for any of the reasons listed above if such claim results from the City's negligence or intentional misconduct. The Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. However, if the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action. The Parties expressly agree that so long as no conflicts of interest exist between them with regard

to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and the agreed-to counsel shall consult with the City throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action. All cost of any such defense, whether incurred by the City or the Developer and to the extent permitted by law, shall be deemed to be Reimbursable Project Costs and reimbursable from CID Revenue or Sales Tax Revenues, and such reimbursable litigation costs shall be in addition to the Reimbursable Project Costs set forth in the Redevelopment Project Cost Budget established in Exhibit E.

12. Funding Sources and Uses of Funds.

A. Private Funds. The Developer shall construct the Redevelopment Project Improvements with private funds. The estimated total cost of the Redevelopment Project Improvements is Eleven Million Four Hundred and Sixty-Nine Thousand and Fifty-Nine Dollars (\$11,469,059), plus interest, financing costs, and administrative fees.

B. Pay-As-You-Go. Reimbursement of the Developer's Reimbursable Project Costs shall be made from available CID Revenues and Sales Tax Revenues deposited into the CID Revenue Fund and Sales Tax Revenue Fund, respectively. The City will not issue any bonds to fund Reimbursable Project Costs, except in its sole and absolute discretion. Provided that this Agreement is implemented as proposed (i.e. CID Revenues and Sales Tax Revenues are produced, and reimbursements are made) the Developer seeks public assistance for the Redevelopment Project Improvements through the reimbursement of CID Revenues and Sales Tax Revenues in the amount not to exceed One Million Four Hundred and Twenty-Eight Thousand and Seven Hundred and Twenty-Two Dollars (\$1,428,722) plus interest and financing costs.

(1) The Developer shall be reimbursed CID Revenue from the CID Revenue Fund for eligible, incurred Reimbursable Project Costs for 27 years, beginning upon the Board of Aldermen's approval of the ordinance establishing the Butterfly Palace CID, or until Developer has been reimbursed for Reimbursable Project Costs in an amount not to exceed One Million Nineteen Thousand and Fifty-Seven Dollars (\$1,019,057) plus Financing Costs, whichever occurs first.

(2) Subject to annual appropriation, the Developer shall be reimbursed Sales Tax Revenue from the Sales Tax Revenue Fund for eligible, incurred Reimbursable Project Costs for 23 years beginning upon issuance of a Certificate of Completion and Compliance for the Redevelopment Project Improvements, or until the Developer has been reimbursed for eligible Reimbursable Project Costs in an amount not exceed Four Hundred Nine Thousand and Six Hundred and Sixty-Five Dollars (\$409,665) plus Financing Costs, whichever occurs first. Notwithstanding the foregoing, reimbursement of Sales Tax Revenues shall occur only when sufficient Sales Tax Revenues are received by the City from the Missouri Department of Revenue. Sales Tax Revenue reimbursement is provided at-risk to the Developer.



- i. If the Certificate of Completion and Compliance for the Redevelopment Project Improvements is issued after January 1, then the Sales Tax Revenue for the first calendar year shall be calculated pro rata. For example, if the Certificate and Completion and Compliance is issued on June 15, the Sales Tax Revenue shall be the cumulative annual City 1% general sales tax revenue collected and transmitted to the Missouri Department of Revenue by The Butterfly Palace which is in excess of the total City 1% general sales tax collected and transmitted to the Missouri Department of Revenue by The Butterfly Palace from June 1 to December 31 in the calendar year prior to the issuance of the Certificate of Completion and Compliance for the Redevelopment Project Improvements.
- ii. To ensure calculations of the Sales Tax Revenue to be reimbursed to the Developer are accurate, the Developer shall seek reimbursement of Sales Tax Revenue annually, after the City's calculation of the total City 1% general sales tax collected and transmitted to the Missouri Department of Revenue by The Butterfly Palace in the then-current calendar year.

C. Chapter 100. In the event that the Board of Aldermen approves the Chapter 100 Plan and Chapter 100 bonds are issued, the following shall apply:

(1) The City shall issue its sales tax exemption certificate for the Developer's purchase of construction materials necessary to the Redevelopment Project Improvements. The Developer may use the certificate only for materials necessary to the Redevelopment Project Improvements. In the case that the Developer utilizes the sales tax exemption certificate for construction materials purchased within the City of Branson, the Developer shall retain such receipts and provide the same to the City with its Certification Application in accordance with **Section 10.**

(2) The Chapter 100 bonds shall provide property tax abatement on the incremental increase in assessed valuation generated by The Butterfly Palace after completion of the Redevelopment Project Improvements. The term of abatement shall be for 25 years and shall provide for abatement of 100% of the property taxes generated by the incremental increase in assessed valuation resulting from The Butterfly Palace. The incremental increase in assessed valuation resulting from The Butterfly Palace shall be determined by annually subtracting the Redevelopment Project Property's assessed valuation in the year prior to the initiation of construction from the then-current assessed valuation of the Redevelopment Project Property. Payments in lieu of taxes ("PILOTs") shall be paid in accordance with the Chapter 100 Plan and the Chapter 100 bonds to all affected taxing jurisdictions by December 31 of each year. PILOTs shall be calculated to equal the portion of

the taxes that would be due on the Redevelopment Project Property were it not for ownership by the City.

(3) This Chapter 100 incentive is estimated to have a value of Six Hundred Eighty-Two Thousand and Six Hundred and Sixteen Dollars (\$682,616) and is not included in the Reimbursement Cap provided in Section 18. For the purposes of clarity, if the Chapter 100 incentive exceeds the estimated value listed herein, no reduction in the Chapter 100 incentive shall occur.

13. Community Improvement District.

A. Petition; CID Sales Tax. The Petition for Establishment of the Butterfly Palace Community Improvement District was filed with the City on April 24, 2025 (the “**CID Petition**”). The CID Petition requested the creation of a CID with boundaries coterminous with the Redevelopment Project Property and contemplated the imposition of a CID sales tax of up to one percent (1%).

B. CID Contract with City. After the CID has been formed Developer shall use good faith efforts to cause the CID board of directors to as soon as practicable and subject to scheduling with the CID board of directors enter into a contract with City in a form reasonably acceptable to City and the CID with regard to funding of the CID Costs (“**Cooperative Agreement**”).

(1) The Cooperative Agreement shall include, without limitation, provisions granting City (1) the right to review and comment on the CID’s annual budget prior to adoption thereof by the CID; (2) such other provisions as City shall reasonably determine to be necessary for the CID’s role in the implementation and funding of the Redevelopment Project Improvements.

(2) The Cooperative Agreement shall provide that the parties acknowledge that the CID may seek a blight determination. In such event, the City agrees to cooperate in good faith to bring to the Board of Aldermen a request to find that the Redevelopment Project Property is blighted.

(3) The Cooperative Agreement shall provide that the parties acknowledge that only a portion of the Reimbursable Project Costs will qualify as CID-eligible expenses. The CID Revenue shall be used to pay for or reimburse the CID Costs. It is the intent of all parties that the provisions of the CID Petition, use of CID Revenue, and provisions of the Cooperative Agreement be designed and implemented with the purpose that CID Revenue will be used to the maximum extent possible to fund Redevelopment Project Improvements so as to allow for the termination of the CID and this Agreement at the earliest possible date.

(4) The Cooperative Agreement shall obligate the CID to levy and maintain the CID Sales Tax until all CID-eligible Reimbursable Project Costs are repaid with CID Revenue.

(5) The Cooperative Agreement shall require that the City be allowed at least two seats on the CID board of directors. In the event that there are more than five seats on the CID board of directors, the City shall be allowed at least 40% of the seats on the CID board of directors.

C. Imposition of CID Sales Tax. Developer shall use good faith efforts to cause the CID board of directors, prior to the start of construction of the Redevelopment Project Improvements identified on the Redevelopment Project Budget whose costs are eligible for reimbursement from CID Revenue, to impose the CID Sales Tax to fund CID Costs.

D. Developer shall not (1) contest the imposition of the CID Sales Tax or (2) advocate or support for the termination of the CID Sales Tax prior to reimbursement of all CID-eligible Reimbursable Project Costs.

E. City shall take all reasonable efforts to cooperate with Developer in Developer's obligation to establish the CID, including considering in good faith and due course any necessary City approvals related to the CID establishment and formation, provided that any approval by City of a petition for the establishment of the CID shall be predicated and conditioned upon the petition's conformance to and compliance with the terms of this Agreement, the CID Act, and Legal Requirements.

F. The term of the CID's existence shall not exceed the time necessary to reimburse CID-eligible Reimbursable Project Costs. The CID Petition requests that the CID terminate upon the earlier of reimbursement of the portion of Developer's Reimbursable Project Costs that are CID-eligible, or twenty-seven (27) years from the date of the ordinance establishing the CID.

14. Conditions Precedent to Developer's Duties. Developer's obligations hereunder are expressly conditioned upon the occurrence of each of the following events:

- A. Execution of this Agreement by the City and the Developer.
- B. The imposition of the CID Sales Tax.
- C. Execution of the CID Contract by the CID and City.

15. Conditions Precedent to City's Duties. City's obligations hereunder are expressly conditioned upon the occurrence of each of the following events:

- A. Execution of this Agreement by the City and the Developer.
- B. The imposition of the CID Sales Tax.
- C. The execution of the CID Contract by the CID and City.

16. CID Revenue Fund and Sales Tax Revenue Fund. The City Treasurer shall establish and maintain the CID Revenue Fund and Sales Tax Revenue Fund, which shall be two (2) separate segregated ledger accounts. CID Revenues shall be deposited into the CID Revenue

Fund. Sales Tax Revenues shall be deposited into the Sales Tax Revenue Fund. CID Revenue and Sales Tax Revenue so deposited and any interest earned on such deposits will be used for the payment of Reimbursable Project Costs in accordance with Legal Requirements.

17. Disbursements from CID Revenue Fund and Sales Tax Revenue Fund. Disbursements from the CID Revenue Fund and the Sales Tax Revenue Fund, to the extent available, will be made in the following manner and order of preference:

A. Payment of Administrative Costs incurred by the City as described in **Section 39.**

B. Payment of Reimbursable Project Costs which have been certified by the City in accordance with the conditions and restrictions set forth in this Agreement, plus applicable Financing Costs.

18. Reimbursable Project Cost Certification.

A. Request for Certification. Attached to this Agreement as **Exhibit E** is a list of Developer Reimbursable Project Costs that are reimbursable from CID Revenue and/or Sales Tax Revenue. The Developer, and those successors and assigns of Developer that have been specifically assigned rights to CID Revenue and/or Sales Tax Revenue under this Agreement pursuant to an Assignment Agreement in accordance with **Section 26** shall have the right to submit requests for certification for Reimbursable Project Costs under the line items and within the budget amounts identified on **Exhibit E** (the “**Reimbursable Cost Categories**”). Reimbursable Project Costs incurred within the Reimbursable Cost Categories are herein sometimes referred to as “**Reimbursable Project Costs**”. The City shall not be responsible for payment of Reimbursable Project Costs to the Developer should CID Revenue and/or Sales Tax Revenue be insufficient to pay for such Reimbursable Project Costs.

B. Developer Reimbursable Project Costs. Upon Developer’s presentation to City of an application for certification of Reimbursable Project Costs which details Reimbursable Project Costs paid in accordance with this Agreement and the CID Petition, together with the total actual project costs and such supporting documentation (including copies of invoices, proof of payment, canceled checks, receipts, lien waivers, and such other supporting documentation as City shall reasonably require) as City shall reasonably determine to be necessary in a form provided by the City (the “**Certification Application**”), City shall review, verify and confirm the information included in the Certification Application.

(1) The Plan estimates that Developer Reimbursable Project Costs will be \$1,428,722, which is 12.46% of the total actual costs estimated to be incurred by the Developer for Redevelopment Project Improvements; thus the total aggregate amount of Reimbursable Project Costs shall not exceed One Million Four Hundred and Twenty-Eight Thousand and Seven Hundred and Twenty-Two Dollars (\$1,428,722), or 12.46% of the total actual costs paid by the Developer, whichever is less (the “**Reimbursement Cap**”). Interest and Financing Costs shall

also be reimbursable as Reimbursable Project Costs but shall not be included in the Reimbursement Cap. In no event shall third parties be entitled to reimbursement unless such reimbursement is assigned pursuant to this Agreement.

(2) The Certification Application shall: (1) separately identify each item of Reimbursable Project Cost by a specific line item category detailed in the Redevelopment Project Cost Budget; (2) aggregate all costs in the Certification Application by reimbursable line item category as set forth in the Redevelopment Project Cost Budget; (3) include a report setting forth the total amount, by reimbursable line item category from the Redevelopment Project Cost Budget of all Reimbursable Project Costs set forth in the then-current Certification Application and all prior Certification Applications approved by City or for which approval is pending; (4) include a report setting forth the Developer's estimate of the approximate percentage of work, by reimbursable line item category from the Redevelopment Project Cost Budget completed as of the date of the current Certification Application; and (5) include the total actual project costs incurred, both cumulatively and for the specific request being sought, and copies of invoices, proof of payment, receipts, lien waivers, and other such supporting documentation related to the requested reimbursement as the City shall reasonably require.

(3) If City determines that: (i) the Certification Application accurately reflects Reimbursable Project Costs paid in accordance with this Agreement and the CID Petition; and (ii) the Reimbursable Project Costs for which certification is requested is in accordance with the Redevelopment Project Cost Budget, the City shall approve the Certification Application and issue a draw certificate (the "**Draw Certificate**").

(4) If City, pursuant to its review of such Certification Application and supporting documentation, determines that any portion of the request for reimbursement should not be approved, it shall state in writing the reasons for such disapproval to Developer.

(5) The City shall issue the Draw Certificate, or the written notice to Developer of the reasons for disapproval of Developer's Certification Application, within thirty (30) days after Developer submits the Certification Application. Any such disapproval of Developer's request may be appealed by Developer to the Board of Aldermen, which shall upon Developer's request hold a hearing at which Developer may present new and/or additional evidence.

C. Administrative Approval. Each Certification Application for Reimbursable Project Costs may be approved administratively, and no action of the Board of Aldermen shall be required to approve such Certification Application.

D. Payment of Interest Expenses. The Developer is eligible to be reimbursed for interest incurred on the principal amount of certified Reimbursable Project Costs, whether financed with Private Loans or equity, until reimbursed, which will not compound, at the rate of 6%.



E. Reallocation of Cost Savings. Developer shall, in each Certification Application, identify the specific line item assigned within the Redevelopment Project Cost Budget as to each Reimbursable Project Cost for which certification is requested. If, after the issuance of a Certificate of Completion and Compliance for the Redevelopment Project, or any portion thereof, there have been cost savings in the amount expended with respect to CID Costs or STR Costs, the costs savings may be utilized to reimburse the Developer for cost overruns for Reimbursable Project Costs that have not been reimbursed from CID Revenue or Sales Tax Revenue, so long as the Reimbursement Cap is not exceeded.

F. Amendments Due to Cost Overruns. The parties acknowledge that the Redevelopment Project Costs set forth in Exhibit E are estimates. In the event that actual costs exceed these estimates, Developer may request approval of the Board of Aldermen to increase the aggregate amount of Reimbursable Project Costs to mitigate the cost increase. Any such request to the Board of Aldermen by the Developer shall explain with supporting documentation such increase in the aggregate amount of the Developer's Redevelopment Project Costs and identify the amount of additional cost reimbursement the Developer would require to keep the respective shares of Redevelopment Project Costs of the Developer and City the same as at the time of the execution of this Agreement.

19. Payment of Project Costs - "As Collected" Basis; Bonds.

A. The Parties anticipate that the Developer be reimbursed on an "as collected" basis and have Reimbursable Project Costs reimbursed from the CID Revenue Fund and Sales Tax Revenue Fund on such an "as collected" basis. Developer shall present to City a Draw Certificate for payment by City, which Draw Certificate shall seek repayment of Reimbursable Project Costs that have been previously certified by City pursuant to a Certification Application. Disbursement to Developer of sufficient proceeds from the CID Revenue Fund or the Sales Tax Revenue Fund, to the extent such funds are available, to pay on the Draw Certificate shall be made within thirty (30) days after the Draw Certificate is submitted. Any payments made on an "as collected" basis shall be payable in accordance with the payment priority set forth in Section 17. The City shall not distribute proceeds from the CID Revenue Fund or Sales Tax Revenue Fund beyond the limits set forth in Section 18.B(1) hereof.

B. Documentation of CID Revenues and Sales Tax Revenues. Within thirty (30) days of the Developer's remittance of CID Revenues and Sales Tax Revenues to the Missouri Department of Revenue, the Developer shall provide or cause to be provided to the City information as to the amount of CID Revenues and Sales Tax Revenues remitted to the Department that it has the control to provide or cause to be provided.

C. The Developer may, from time to time, request that the City issue bonds, and the decision to issue bonds shall be in the sole discretion of the City. The Developer will cooperate with the professionals engaged by the City to facilitate the issuance of the bonds, including entering into continuing disclosure undertakings with respect to the bonds. If the Developer requests that the City issue bonds, the Developer shall execute a funding agreement to provide funding to the City to evaluate the request for bonds, and the Developer shall comply with any necessary due diligence requested by the City or its

consultants in relation to such bond issuance request. At no time will the City back any bonds with its credit. If bonds are issued pursuant to this Section, the net proceeds from the sale of the bonds shall be used to reimburse the Developer for Reimbursable Project Costs for which a Draw Certificate has been issued.

20. Reserved.

21. Sale or Lease of Redevelopment Project Property. Developer shall include a provision in the “Declaration of Restrictive Covenants” (as defined in **Section 22** of this Agreement) requiring any lease or purchase agreement signed by the lessee or purchaser indicating acknowledgment and agreement to the following provision:

**Sales Taxes:** [Tenant/Purchaser] acknowledges that the Redevelopment Project Property is located within the boundaries of a Community Improvement District (“CID”) which will have the power to impose a sales tax on any retail sales generated within [Tenant/Purchaser]’s Redevelopment Project Property. [Tenant/Purchaser] also acknowledges that the Redevelopment Project Property is subject to a sales tax reimbursement agreement. [Tenant/Purchaser] shall forward to the City Finance Department copies of [Tenant/Purchaser]’s State of Missouri sales tax returns for its sales within the Redevelopment Project Property when and as they are filed with the Missouri Department of Revenue, quarterly copies of all utility bills paid in relation to the Redevelopment Project Property identifying the amount of taxes paid on such utilities, and, upon request, shall provide such other reports and returns regarding other state or local taxes generated by [Tenant/Purchaser]’s economic activities upon the Redevelopment Project Property as the City shall require, all in the format prescribed by the City. [Tenant/Purchaser] acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

If such language is not included in the Declaration of Restrictive Covenants, failure of Developer to otherwise notify any tenant or purchaser of the obligations and restrictions set forth herein shall not modify, lessen, or diminish such obligations or restrictions. The City shall comply with all applicable state laws limiting disclosure of sales tax information related to individual businesses provided to the City as documentation of CID Revenue and Sales Tax Revenues. The City’s access and use of such information shall be limited to only that which is necessary to administer the CID Revenue and Sales Tax Revenue.

22. Disposition of Redevelopment Project Property.

A. Restriction on Transfer. In the event that the Developer seeks to transfer The Butterfly Palace, or the Redevelopment Project Property, or a portion thereof, during the term of this Agreement, such transfer may only occur upon the prior written approval of

the Board of Aldermen, which approval shall not be unreasonably withheld, and upon the prior execution of an Assignment Agreement as provided in **Exhibit F**.

B. **Incorporation.** Within sixty (60) days after the approval of this Development Agreement, Developer shall record a declaration of restrictive covenants (the “**Declaration of Restrictive Covenants**”) against all property in the Redevelopment Project Property now owned or in the future leased by Developer, binding upon its successors in ownership and requiring such successors to:

- (1) Utilize the Redevelopment Project Property primarily as a tourism attraction to exhibit butterflies;
- (2) comply with the provisions of **Section 9** of this Agreement;
- (3) not contest the imposition of the CID Sales Tax or advocate or support for the termination of the CID Sales Tax prior to reimbursement of all CID-eligible Reimbursable Project Costs. ; and
- (4) comply with the restrictions set forth in **Sections 21** and **22** of this Agreement.

The Declaration of Restrictive Covenants shall further provide that (i) the Declarations of Restrictive Covenants shall be construed as a covenant running with the land, (ii) the obligations and restrictions shall constitute a benefit held by both Developer and the City and that the City is an intended third party beneficiary of said obligations and restrictions and has a separate and independent right to enforce such provisions, and (iii) the Declaration of Restrictive Covenants shall remain in effect for the duration of the CID and the reimbursement of Sales Tax Revenue. Developer shall ensure that the Declaration of Restrictive Covenants has been recorded with the office of the Recorder of Deeds for Taney County at its cost and expense prior to the sale or transfer by Developer of any property within the Redevelopment Project Property. Prior to recording the Declaration of Restrictive Covenants, Developer shall provide a copy of the same to the City.

C. **Notification to City of Transfer.** Developer shall notify City in writing of any proposed transfer of any or all of the real property in the Redevelopment Project Property, The Butterfly Palace, or any interest therein. Such notice shall be provided not less than thirty (30) days prior to the proposed effective date of the sale or other transfer and shall include a copy of the disposition document to enable City to confirm that the requirements set forth above in this Section 22 have been fulfilled.

## 23. **Continuing Disclosure and Progress Reports.**

A. **Continuing Disclosure.** In the event that the Developer becomes insolvent, is notified of default or foreclosure of loans related to the Redevelopment Project Property or The Butterfly Palace, begins voluntary or involuntary bankruptcy proceedings, or otherwise suffers a reduction in capacity to complete the Redevelopment Project Improvements, the Developer shall notify the City of such issue in accordance with this Agreement.

B. Progress Reports. At the first regularly scheduled meeting of the Board of Aldermen following the first anniversary of the Board of Aldermen's approval of this Agreement and each anniversary thereafter until all Redevelopment Project Improvements are completed, Developer shall report to the Board of Aldermen the progress of its implementation of the Redevelopment Project Improvement in writing; and at the City's request, appear in person at a Board of Aldermen meeting to present such report. At the request of the City, at the first regularly-scheduled meeting of the Board of Aldermen following the fifth anniversary of the Board of Aldermen's approval of this Agreement and on each five-year anniversary thereafter so long as this Agreement shall remain in effect, Developer shall prepare and present in person to the Board of Aldermen a detailed report on the progress of implementation of the Redevelopment Project Improvements. The Developer's reports shall include such additional information as City may reasonably require, and such additional information as Developer wishes to present, including, without limitation:

- (1) Redevelopment Project Improvements completed;
- (2) Status of Redevelopment Project Improvements in progress but not yet completed;
- (3) Actual Redevelopment Project Costs in the Redevelopment Project Property compared to Redevelopment Project Cost estimates;
- (4) Actual start and completion dates of Redevelopment Project Improvements in the Redevelopment Project Property compared to estimates provided herein; and
- (5) Estimated start date of Redevelopment Project Improvements not yet commenced at date of report.

24. Compliance with Laws. Subject to Developer's rights to contest the same in any manner permitted by law, Developer, its officers, directors and principals, at its sole cost and expense, shall comply in every respect with all Legal Requirements now in force or which may be enacted hereafter which pertain to the construction of the Redevelopment Project Improvements, and the ownership, occupancy, use and operation of the Redevelopment Project Property.

(1) Prevailing Wage. If applicable and required by law, Developer and its contractor(s) and subcontractor(s) shall comply with all requirements of the Missouri Prevailing Wage Law in connection with the construction of the Redevelopment Project Improvements. Developer shall indemnify the City and CID for any damage resulting to the City from failure of the Developer, its contractor(s) or any subcontractor(s) to pay prevailing wages pursuant to applicable laws, if any.

(2) Payment Bond. If applicable and pursuant to 107.170, RSMo., Developer and its contractor(s) and subcontractor(s) shall provide to the City a labor and materials payment bond in the amount of the work to be performed by

the Developer, its contractor(s), and subcontractor(s) or any other such instrument required to satisfy the requirements contained with 107.170 RSMo.

25. Authorized Employees. Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. Developer therefore covenants, and will provide an affidavit from any general contractor directly employed by Developer to construct Redevelopment Project Improvements in substantially the same form as is attached as Exhibit G and in compliance with 285.530, RSMo.

26. Assignment of Developer's Obligations.

A. Without limiting the rights of Developer or any third party under Section 22, Developer agrees that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by Developer without the prior written consent of the Board of Aldermen, which consent will not be unreasonably withheld. Any proposed assignee shall have all of the qualifications and financial responsibility, as reasonably determined by the Board of Aldermen, necessary and adequate to fulfill the obligations of Developer, and, if the proposed assignment relates to a portion of the Redevelopment Project Property, such obligations to the extent that they relate to such portion of the Redevelopment Project Improvements.

B. Any proposed assignee shall, utilizing a form substantively and substantially similar to the form attached hereto as Exhibit F (the "Assignment Agreement"), expressly for the benefit of City, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the assignment is of or relates to a portion of the Redevelopment Project Property, such obligations, conditions and restrictions to the extent that they specifically relate to such portion). For purposes of this section, any sale, transfer, assignment, pledge or hypothecation of an interest in Developer (other than to an Affiliate or Related Entity) that results in a change in management control of Developer will constitute an assignment of this Agreement. Upon approval of the Assignment Agreement by the Board of Aldermen as set forth herein, Developer shall be released from such obligations accruing after the date of such assignment, and any default by any such assignee shall not affect Developer's rights under this Agreement, including the right to reimbursement from CID Revenue and Sales Tax Revenue generated within the Redevelopment Project Property.

C. Notwithstanding the provisions of this Section 26, for purposes of securing financing, Developer may, without the City's consent, assign or pledge to the party providing financing Developer's right to receive reimbursement for Reimbursable Project Costs incurred, but Developer shall provide City with thirty (30) days' notice of any such assignment or pledge. Such assignment or pledge shall remain subject to the terms, provisions and conditions of this Agreement.

27. Representations and Warranties



A. Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof:

(1) Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

(2) No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(3) Litigation. To the best of the City's knowledge, there is no litigation or proceeding pending against the City with respect to the CID Petition, Chapter 100 Plan, or this Agreement. In addition, to the best of the City's knowledge, there is no other litigation or proceeding that is pending against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

(4) Governmental or Corporate Consents. Except for approval of this Agreement by Ordinance of the Board of Aldermen, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(5) No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

(6) Construction Permits. The City reasonably believes that all permits and licenses regulated by the City and necessary to construct the Redevelopment Project Improvements can be obtained.

B. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the date hereof:

(1) Due Authority. The Developer has all necessary power and authority to execute, deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer

herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

(2) No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(3) Litigation. To the best of the Developer's actual knowledge, there is no litigation, proceeding or investigation pending or threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

(4) No Material Change. (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

(5) Governmental or Corporate Consents. To Developer's knowledge, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement other than the subsequent approvals addressed in this Agreement.

(6) No Default. To Developer's knowledge, no default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

(7) Approvals. Except for subsequent approvals addressed in this Agreement, the Developer has obtained or will obtain all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip,

operate and maintain the Redevelopment Project Improvements. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

(8) Construction Permits. Except for subsequent approvals addressed in this Agreement, all governmental permits and licenses required by applicable law to construct, occupy and operate the Redevelopment Project Improvements have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Redevelopment Project Improvements to be constructed.

(9) Compliance with Laws. To Developer's actual knowledge, the Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(10) Other Disclosures. The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct to the actual knowledge of the Developer and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

(11) Redevelopment Project Property. The Developer represents and warrants that the Redevelopment Project Property is of sufficient size to construct the Project as contemplated in the Plan and this Agreement.

(12) Tax and Legal Implications. The Developer represents and agrees that 1) neither the City nor any of its officials, employees, consultants, attorneys, financial advisors, or other agents have provided to the Developer any advice regarding the federal, state, or local tax or other legal implications or consequences of this Agreement and the transactions contemplated hereby; and 2) that Developer is relying solely upon its own employees, consultants, attorneys, financial advisors, or other agents in this regard.

28. Indemnification.

A. Developer shall indemnify, protect, defend and hold City and its officers, directors, members, commissioners, employees and agents (collectively, the "**Indemnified Parties**" or, individually, an "**Indemnified Party**") harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or

allegedly occurring as a result of any acts or omissions of Developer, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement, including but not limited to, any damages or penalties incurred by the City as a result of the failure of the Developer or its contractors to comply with applicable Legal Requirements related to the construction of the Redevelopment Project Improvements. Provided that, Developer shall not indemnify, protect, defend and hold the Indemnified Parties harmless from and against any of the above which directly or indirectly results from the City's negligence, intentional misconduct, or the City's exercise of its right of inspection under **Section 8(A)**.

(1) Notwithstanding the foregoing the Developer shall indemnify, protect, defend and hold the Indemnified Parties harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property relating to the reimbursement of Sales Tax Revenues pursuant to this Agreement.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Developer of the occurrence of such event. After receipt of such notice, Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel of Developer's choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof by counsel of the Indemnified Party's choice. In the event that Developer shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for reasonable fees and costs received from its counsel to Developer for payment and, within thirty (30) business days after such submission, Developer shall transfer to the Indemnified Party sufficient funds to pay such bills which were necessary to the defense of the Action. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

C. An Indemnified Party shall submit to Developer any settlement proposal that the Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

D. Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce City to enter into this Agreement. To the fullest extent

permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement. If such court action is successful, the Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

E. With respect to liability that arises during the term of this Agreement, the right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

29. Insurance.

A. As used in this Section 29, "Replacement Value" means an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than one hundred percent (100%) of the actual replacement cost of the Redevelopment Project Improvements, including additional administrative or managerial costs that may be incurred to effect the repairs or reconstruction, but excluding costs of excavation, foundation, and footings.

B. The Developer, or its successors and assigns in accordance with Sections 22 and 26, as applicable, shall keep the Redevelopment Project Property and Redevelopment Project Improvements continuously insured with general liability insurance at or above the amounts established by 537.610, RSMo. and with property insurance for full Replacement Value, which such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Redevelopment Project Property. Notwithstanding the foregoing, the City may accept and approve a policy for insurance coverage that has been required and approved by the Developer's lender for Private Loans.

C. The City does not represent in any way that the insurance specified in this Section, whether in scope, overall coverage or limits of coverage, is sufficient to protect the business or interests of the Developer. Any insurance procured pursuant to this Section 29 shall not waive and shall not be construed to waive any sovereign immunity available to the City, its officials, employees, or agents, or any other immunity or defense available to the City, its officials, employees, or agents.

D. All such policies, or a certificate or certificates of the insurers that the insurance required in this Section 29 is in full force and effect, shall be provided to the City. Prior to the expiration of any such policy, the Developer shall furnish to the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer if the Developer provides the City with a certificate from an Insurance Consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing the insurance to be required by this Agreement shall provide for at least ten (10) days' written



notice to the Developer and the City of any cancellation, reduction in amount or material change in coverage.

30. Option to Restore.

Utilizing casualty insurance proceeds, the Developer, or its successors and assigns in accordance with Sections 22 and 26, as applicable, shall have the option to promptly restore, replace, or rebuild the Redevelopment Project Improvements, or shall have the option to promptly cause the same to be restored, replaced, or rebuilt, to as nearly as possible the value, quality, and condition it was in immediately prior to fire or other casualty if any portion of the Redevelopment Project Improvements becomes damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance).

31. Breach-Compliance.

A. If Developer or City does not comply with provisions of this Agreement, including provisions of the Cooperative Agreement, within the time limits and in the manner for the completion of the Redevelopment Project Improvements as therein stated, except for any extensions or waivers described herein and Excusable Delays, in that Developer or City shall do, permit to be done, or fail or omit to do, anything contrary to or required of it by this Agreement or the Cooperative Agreement, and if, within sixty (60) days after notice of such default by the non-defaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said sixty (60) day period, then the non-defaulting party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the party in default of its obligations, in the case of default by Developer, City is granted the right to terminate this Agreement, the right to withhold or apply funds from the CID Revenue Fund or the Sales Tax Revenue Fund to such extent as is necessary to protect City from loss or to ensure that this Agreement and the Redevelopment Project Improvements are fully and successfully implemented in a timely fashion, and the right to withhold issuance of a Certificate of Completion and Compliance. Notwithstanding anything to the contrary herein, the City shall, in good faith, certify any Reimbursable Project Costs, approve any Certification Application or Draw Certificate and reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer up to and including the date of receipt of any notice of default or termination. If any action is instituted by either party hereunder, the non-prevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Agreement.

B. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

C. Developer (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Agreement), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of contract.

D. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this **Section 31** shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default, except to the extent specifically waived.

E. In no event shall City be obligated to certify any Reimbursable Project Costs, approve any Reimbursement Request or reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer at any time while any default by Developer has occurred and remained uncured beyond Developer's cure period as provided in **Section 31.A.** herein, and City has provided notice of such default as required under **Section 31.** Notwithstanding the above, if the City validly terminates this Agreement, the City shall be required to, in due course according to the standards set forth herein, certify any Reimbursable Project Costs, approve any Reimbursement Request and reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer prior to any such notice of default. If City shall at any time elect to rely upon the provisions of this **Section 31.E** as the basis for an action by City, City shall, at the time of such election, notify Developer in writing of such decision and the specific facts or events relied upon by City as the basis for such action by City.

F. Notwithstanding anything to the contrary contained in this Agreement, a breach of any obligation under this Agreement by a party other than Developer will not constitute a breach of this Agreement with respect to Developer and Developer's reimbursement rights hereunder.

32. Excusable Delays.

A. The parties understand and agree that neither party shall be deemed to be in default of this Agreement because of delays or temporary inability to commence, complete or proceed in accordance with the Redevelopment Schedule, due in whole or in part to causes beyond the reasonable control or without the material fault of such party which are caused by the action or failure to act of any governmental body, including but not limited to the issuance of permits and approvals by the City, breach of this Agreement by the other party, or any natural occurrence, strikes, acts of war or civil insurrection, lock-outs, riots, floods, earthquakes, fires, casualties, pandemics, acts of God, labor disputes, governmental restrictions or priorities, embargoes, delays in delivery of materials out of Developer's control, tornadoes, or unusually severe weather (collectively "**Excusable Delays**").

B. The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, with, in the case of any extension sought by Developer, the approval of City, which approval shall not be arbitrarily or unreasonably withheld. Developer may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays.

33. Notice. Any notice required by this Agreement shall be deemed to be given if it is mailed by United States certified mail, postage prepaid, and addressed as hereinafter specified.

To the City:

City Administrator  
Branson, Missouri  
110 W Maddux  
Branson, Missouri 65616

With a copy to:

Joseph G. Lauber, Esq.  
Lauber Municipal Law  
4031 NE Lakewood Way, Suite 1  
Lee's Summit, Missouri 64064

To the Developer:

Butterfly Palace  
Attention: Bruce Herschend  
4106 W. 76 Country Boulevard  
Branson, MO 65616

With a copy to:

Curt Petersen  
Polsinelli, P.C.  
900 W. 48<sup>th</sup> Place, Suite 800  
Kansas City, MO 64112

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

34. Modification. The terms, conditions, and provisions of this Agreement and of the Plan can be neither modified nor eliminated except in writing and by mutual agreement between City and Developer.

35. Effective Date and Term. This Agreement shall become effective on the date first set forth above, and shall remain in full force and effect, until the earlier of a) completion of all Redevelopment Project Improvements and reimbursement of all Reimbursable Project Costs, or b) the termination of this Agreement.

36. Recording. The Developer shall prepare and record a memorandum of this Agreement in the Office of the Recorder of Deeds for Taney County.

37. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

38. Covenant Running with the Land. The provisions of this Agreement shall remain in effect for the duration of this Agreement. They shall be covenants running with the land and shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Developer, its successors and

assigns, (provided, subject to the provisions of **Section 26** hereof, that any such covenants shall be binding on Developer itself, and its successors and assigns, only during their period of ownership).

39. Administrative Costs and Expenses.

A. In order to reimburse City for its reasonable administrative costs and expenses (including staff time and contracted services) in connection with the preparation, development and implementation of the CID Petition, Cooperative Agreement, Chapter 100 Plan, and this Agreement, the City and Butterfly Cathedral, LLC entered into a Funding Agreement dated July 8, 2024 (the “**Funding Agreement**”). Any of City’s actual and reasonable administrative costs and expenses that are provided for in this **Section 39** and which are not covered by the Funding Agreement shall be paid by Developer within sixty (60) days of having been billed for same and may be claimed by Developer as Reimbursable Project Costs. The Funding Agreement shall remain in full force and effect until CID Revenue is deposited into the CID Revenue Fund and Sales Tax Revenue is deposited into the Sales Tax Revenue Fund. Immediately thereafter, the Funding Agreement shall terminate and any remaining balance of Developer funds held by the City thereunder shall be returned to the Developer.

B. The City shall receive an administrative fee to cover costs of additional resources necessary to implement and administer this Agreement, deposits to and payments from the CID Revenue Fund and Sales Tax Revenue Fund, and administration of the CID as provided in the Cooperative Agreement. Beginning in the City fiscal year immediately following the fiscal year in which funds become available in the CID Revenue Fund and the Sales Tax Revenue Fund and upon termination of the Funding Agreement, the City shall be entitled to an administrative fee of 2% of the CID Sales Tax Revenue generated by the Butterfly Palace CID and 2% of the Sales Tax Revenues reimbursed to the Developer (“City Administrative Fee”). The City may choose to utilize a cost certification consultant, in which case, the cost of paying the consultant to perform cost certification shall be paid by the Developer and shall be a Reimbursable Project Cost. The City Administrative Fee shall be reimbursed from the CID Revenue Fund and Sales Tax Revenue Fund, but shall not be deducted from the aggregate amount of the Developer’s Reimbursable Project Costs. The City shall be responsible for any and all administrative costs and expenses that exceed the then-current City Administrative Fee. The City Administrative Fee shall not be construed to limit any costs, fees and expenses, including attorneys’ fees, incurred by the City in enforcing this Agreement.

C. Upon the request of Developer, City shall furnish appropriate documentation of the administrative costs and expenses as referred to in this **Section 39** and shall allow Developer or its representatives an opportunity to review the accounts and records of City with regard to such administrative costs and expenses. In the event Developer disputes the reasonableness of any portion of the City’s administrative costs and expenses as referred to in this **Section 39**, then, Developer may request, and the Board of Aldermen will hold, a hearing at which Developer may present evidence as to why the City’s request to utilize CID Revenue and/or Sales Tax Revenue for such expenses should be denied.



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

41. Time and Performance are of the Essence. Time and exact performance are of the essence of this Agreement.

42. City's Legislative Powers. Notwithstanding any other provisions in this Agreement, nothing herein shall be deemed to usurp the governmental authority or police powers of City or to limit the legislative discretion of the Board of Aldermen, and no action by the Board of Aldermen in exercising its legislative authority shall be a default under this Agreement.

43. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the City and Developer.

44. Good Faith; Consent or Approval. In performance of this Agreement or in considering any requested extension of time, the parties agree that each will act in good faith, cooperate in expeditious and timely approvals, and will not act unreasonably, arbitrarily, or capriciously or unreasonably withhold or delay any approval required by this Agreement; provided, however, that the City need not act reasonably in considering a requested extension of time that would extend a time period set forth in this Agreement for the performance of an obligation by the Developer by more than two (2) years from the original end of such period as set forth in this Agreement. Except as otherwise provided in this Agreement, whenever consent or approval of the City is required, such consent or approval may be granted by the City Administrator or his designee administratively and no action of the Board of Aldermen shall be required. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed. The City agrees to reasonably cooperate with the Developer with respect to (i) applications for building permits from the City and the issuance thereof, and any permits or approvals required from any governmental agency, whenever reasonably requested to do so; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes, (ii) securing any construction and permanent financing that the Developer may reasonably require in connection with the performance of its obligations under this Agreement, (iii) reviewing and approving Developer's plans, including but not limited to site plans and building elevations, construction plans, design criteria and any amendments thereto as part of the Land Use Approvals. The Developer agrees and acknowledges that in each instance in this Agreement or elsewhere where the City is required or has the right to review or give its approval or consent, no such review, approval or consent will imply or be deemed to constitute an opinion by the City, nor impose upon



the City any responsibility for the design or construction of building elements, including but not limited to the structural integrity or life/safety requirements or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the Environmental Laws. All reviews, approval and consents by the City under the terms of this Agreement are for the sole and exclusive benefit of the Developer and no other person or party will have the right to rely thereon.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**CITY:**

THE CITY OF BRANSON, MISSOURI, a  
municipal corporation

By: \_\_\_\_\_  
Larry Milton  
Mayor

ATTEST:

\_\_\_\_\_  
Hillary Briand, City Clerk

STATE OF MISSOURI                    )  
  ) ss.  
COUNTY OF TANEY                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me personally appeared Larry Milton, to me known, who being by me duly sworn, did say that he is the Mayor of the City of Branson, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Aldermen, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_



## EXHIBIT A

### Legal Description of Redevelopment Project Property

A tract of land being a part of COMMERCE PARK WEST, a commercial subdivision as per the recorded plat thereof, Plat Book 22, Page 43, of the record's of Taney County, Missouri, said tract being situated in the SW1/4 of the NW1/4 of Section 35, Township 23 North, Range 22 West, being more particularly described as follows

Beginning at the Northwest corner of the SW1/4 of the NW1/4; thence South 89° 57' 01" East, along the North line 412.70 feet to the Northwest corner of the parcel described in Book 317, at pages 9076-9077; thence South 00° 16' 19" East, 109.93 feet; thence South 89° 57' 01" East 182.80 feet; thence North 17° 07' 59" East, 115.00 feet, said point being on the North line of the SW1/4 of the NW1/4; thence North 89° 06' 29" East, along the North line of the SW1/4 of the NW1/4, 42.14 feet; thence South 17° 10' 24" West, 130.93 feet; thence South 36° 31' 35" West, 604.58 feet to a point on the Northerly R/W line of M.S.H.D. West 76; thence North 57° 28' 16" West, 7.36 feet to the M.S.H.D. West 76 PT Station 95+64.71 and 35.00 feet left of center line, said point being a non-tangent curve; thence continuing Northwesterly along the Northerly R/W line of M.S.H.D. West 76 along a non-tangent 9.4130° segment of a curve to the left, 273.71 feet (said segment having a chord bearing and distance of North 79° 47' 54" West, 271.41 feet and having a radius of 608.69 feet) to a point on the West line of the SW1/4 of the NW1/4; thence North 00° 01' 16" West, along the West line of the SW1/4 of the NW1/4, 558.79 feet to the Point of Beginning; containing 6.18 acres of land, more or less.

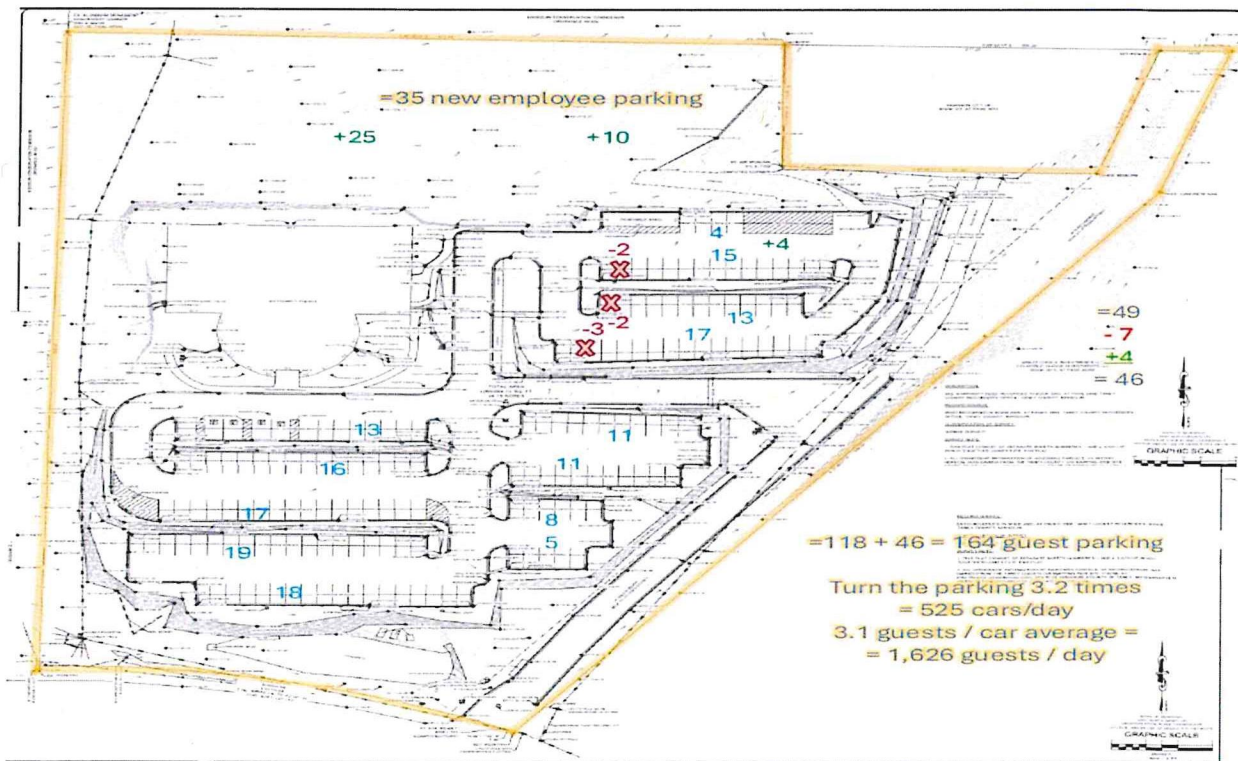
SUBJECT TO a road easement in Favor of the City of Branson as filed in Book 317, pages 9072-9073, being the uniform width of 40.00 feet, the Easterly line of which is described as follows: Commencing at the Northwest corner of the SW1/4 fo the NW1/4 of said Section 35; thence South 89° 06' East, 671.75 feet to the True Point of Beginning of said road easement; thence South 17° 59' West, 130.90 feet; thence South 37° 21' West, 606.73 feet to a point in the Northerly R/W of M.S.H. #76.

LESS AND EXCEPT:

Taney County, Missouri Parcel ID Number 07-7.0-35-000-000-003.010B.

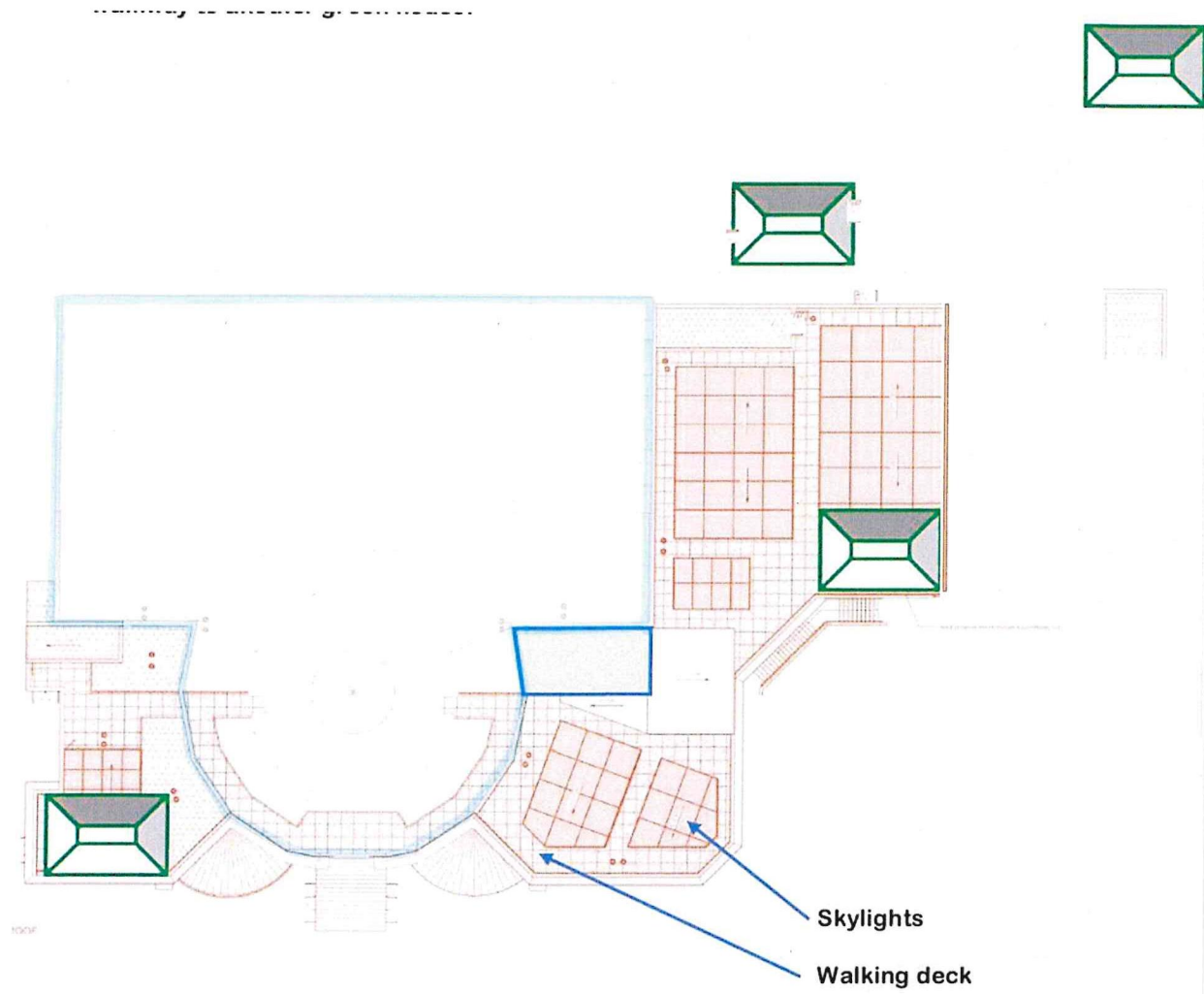
## EXHIBIT B

### Map of Redevelopment Project Property and Site Plans









## **EXHIBIT C**

### **Redevelopment Project Improvements**

- A. Expansion of existing Aviary, including a complete roof replacement and storm shutter installation;
- B. Development of a new third level to allow rooftop exhibits;
- C. Development of an event center;
- D. Development of a new parking lot and maintenance of the same;
- E. Development of new, interactive exhibits; and
- F. Improvements related to the above.

## EXHIBIT D

### Redevelopment Schedule

REDEVELOPMENT PROJECT IMPROVEMENT	ANTICIPATED COMMENCEMENT	ANTICIPATED COMPLETION
Development of a new parking lot	March 1, 2025	June 30, 2027
Expansion of existing Aviary, including a complete roof replacement and storm shutter installation;  Development of a new third level to allow rooftop exhibits; and  Development of an event center.	November 1, 2025	June 30, 2027
Development of new, interactive exhibits	March 1, 2026	June 30, 2027

## EXHIBIT E

### Redevelopment Project Cost Budget

Exhibit E - Butterfly Palace Expansion - Reimbursable Project Costs							
Uses	Total (\$)	Reimbursable Costs <sup>1</sup>	STR Costs <sup>2</sup>	CID Costs <sup>3</sup>	% of Total	Private Cost	% of Total
Facility Construction	\$ 9,138,450	\$ 1,428,722	\$ 409,665	\$ 1,019,057	15.63%	\$ 7,709,728	84.37%
<i>Expansion</i>	7,500,268	409,665	409,665		5.46%		
<i>Roof Repair</i>	619,125				0.00%		
<i>Public Facilities &amp; Parking</i>	1,019,057	1,019,057		1,019,057	100.00%		
Hard Cost Contingency	489,873				0%	489,873	100.00%
Soft Costs	1,840,736				0%	1,840,736	100.00%
<b>Total<sup>4</sup></b>	<b>\$11,469,059</b>	<b>\$1,428,722</b>	<b>\$409,665</b>	<b>\$1,019,057</b>	<b>12.46%</b>	<b>\$10,040,337</b>	<b>87.54%</b>

1- Maximum principle to be reimbursed, plus reimbursable interest.

2- Reimbursement of the incremental increase in the city's 1% General Sales Tax for 23 years or indicated amount whichever occurs first

3- Sales Tax rate of 1.0%. Not to exceed the indicated amount or 27 years of collection, whichever occurs first

4- Does not reflect the value of the Chapter. 100 Abatement or Sales Tax Exemption



**EXHIBIT F**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**See attached**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment**”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and is made by and between R B D MARKETING, LLC, a Missouri limited liability corporation (“**Assignor**”), \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), and the CITY OF BRANSON, MISSOURI, a municipal corporation (the “**City**”).

### RECITALS

A. The Board of Aldermen of the City of Branson (the “Board of Aldermen”) adopted Ordinance No. \_\_\_\_\_ on \_\_\_\_\_ approving the Development Agreement to expand The Butterfly Palace in Branson, Missouri.

B. Pursuant to **Section 26** of the Development Agreement, Assignor now desires to enter into this Assignment to convey to Assignee certain duties and obligations under the Development Agreement (as more fully described herein) with respect to the property described in **Exhibit A** to this Assignment (“**Property**”), and Assignee has agreed to assume and perform all such duties and obligations under the Development Agreement with respect to the Property [or if the boundaries of the Property are not coterminous with the boundaries of the Redevelopment Project Property and the proposed assignment relates only to a portion of the Redevelopment Project Property (“**Subject Property**”), then only those rights and obligations of Assignor that relate to such portion of the Redevelopment Project Property described on Exhibit A to this Assignment].

C. The parties desire to enter into this Assignment in order to satisfy the condition precedent set forth in **Section 26** of the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and among Assignor, Assignee, and the City as follows:

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Assignment in full and form an integral part hereof.

2. Definitions. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Development Agreement, CID Petition, and Chapter 100 Plan.

3. Understanding of Assignee.

a. Assignee acknowledges that it has been provided with and/or has reviewed true and accurate copies of the CID Petition, Chapter 100 Plan, Development Agreement, and all other documents associated with the Development Agreement that may be necessary for Assignee to make an informed decision regarding the assignment of rights it is about to accept under this Assignment Agreement.

b. Assignee acknowledges and agrees that its acceptance of the assignment from the Assignor is subject in all respects to the Development Agreement, the requirements of the CID Petition, the Chapter 100 Plan, and the rights of the City pursuant to the Development Agreement.

c. Assignee acknowledges and agrees that the Property is included in the Redevelopment Project Property designated by the City pursuant to the Development Agreement and that certain sales taxes generated by the Redevelopment Project Property will be applied toward Reimbursable Project Costs.

e. Assignee acknowledges that, pursuant to **Section 13** of the Development Agreement, the Property is or may be subject to certain sales and use taxes which may be imposed as a result of the establishment of a community improvement district ("CID") pursuant to a contract between the CID and the City, and other covenants, conditions and approval rights which are more fully set forth in the Development Agreement.

4. **Assignment by Assignor.** The Assignor hereby assigns to the Assignee only those Assignor's rights, duties, interests and obligations under the Development Agreement specifically described in **Exhibit B** to this Assignment [or if the boundaries of the Property are not coterminous with the boundaries of the Redevelopment Project Property and the proposed assignment relates only to a portion of the Redevelopment Project Property, then only those rights and obligations of Assignor as specifically described herein that relate to such portion of the Redevelopment Project Property described on Exhibit A to this Assignment].

5. **Assumption by Assignee.** Assignee hereby accepts such assignment from Assignor and expressly covenants to the City and Assignor that it assumes and agrees to perform those rights, duties, interests and obligations of the Assignor assigned to it pursuant to this Assignment as described in **Exhibit B**. Assignee releases Assignor from any liability relating to the rights, duties, interests and obligations under the Development Agreement specifically described in **Exhibit B**.

6. **City's Consent and Release.** Upon the execution of this Assignment by City, the assignment and assumption provided for herein shall be deemed to have been approved and consented to by the City, and Assignor shall be deemed to have been released from those Assignor's rights, duties, interest and obligations under the Development Agreement as specifically described herein.

7. **Representations and Warranties of Assignee.** Assignee is a \_\_\_\_\_ qualified to conduct its business in the State of Missouri and has all requisite power and authority to enter into, execute this Assignment and to perform its obligations hereunder. This Assignment, assuming the due execution and delivery hereof by Assignor and City, constitutes legally valid and binding obligations of Assignee, enforceable against Assignee in accordance with the terms and conditions herein.

8. Notices. All notices, requests and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail with postage prepaid as follows:

If to Assignee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Assignor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Curt Peterson  
Polsinelli, P.C.

\_\_\_\_\_  
\_\_\_\_\_

If to City:

City Administrator  
City of Branson, Missouri  
110 W Maddux Street  
Branson, Missouri 65616

With a copy to:

Joseph G. Lauber, Esq.  
Lauber Municipal Law  
4031 NE Lakewood Way, Suite 1  
Lee's Summit, Missouri 64064

9. Successors and Assigns. All rights, benefits and obligations of Assignor and Assignee hereunder shall inure to and bind Assignor and Assignee, respectively, and this Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

10. Governing Law. This Assignment shall be governed by the laws of the State of Missouri.

11. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

12. Expenses. Except as otherwise provided herein, each of the parties hereto will pay its own costs and expenses, including attorney's fees, incurred by such party or on its behalf in connection with this Assignment and the transactions contemplated herein. Costs and expenses incurred by the City in connection with this Assignment may be reimbursed as Administrative Costs pursuant to the Development Agreement.

13. Recording. This Assignment, or a memorandum of this Assignment, shall be recorded in the office of the Recorder of Deeds for Taney County, Missouri by Assignee at its sole cost and expense.



IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**  
R B D MARKETING, LLC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of R B D Marketing, LLC, a Missouri limited liability corporation, personally known by me to be the person who executed the within instrument on behalf of said R B D Marketing and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known by me to be the person who executed the within instrument on behalf of said \_\_\_\_\_ and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_

CITY:

THE CITY OF BRANSON, MISSOURI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF TANEY     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that he/she is the Mayor of the City of Branson, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Aldermen, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A TO ASSIGNMENT AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY [OR SUBJECT PROPERTY]**

**EXHIBIT B TO ASSIGNMENT AGREEMENT**

**RIGHTS, DUTIES, INTERESTS AND OBLIGATIONS UNDER THE PLAN AND  
REDEVELOPMENT AGREEMENT THAT ARE ASSIGNED**



**EXHIBIT G**

**Form of Affidavit of Work Authorization**

**CITY OF BRANSON, MISSOURI  
WORK AUTHORIZATION AFFIDAVIT  
PURSUANT TO 285.530, RSMO  
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)**

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

As used in this Affidavit, the following terms shall have the following meanings:

**EMPLOYEE:** Any person performing work or service of any kind or character for hire within the State of Missouri.

**FEDERAL WORK AUTHORIZATION PROGRAM:** Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

**KNOWINGLY:** A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

**UNAUTHORIZED ALIEN:** An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is \_\_\_\_\_ and I am currently the \_\_\_\_\_ of \_\_\_\_\_ (hereinafter "Contractor"), whose business address is \_\_\_\_\_, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Branson, Missouri:

\_\_\_\_\_  
4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

\_\_\_\_\_  
AFFIANT SIGNATURE

\_\_\_\_\_  
AFFIANT PRINTED NAME

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Name)

*PLEASE NOTE:*

Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding:

1. A valid, completed copy of the first page identifying the Contractor; and
2. A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division.

**PUBLIC PURPOSE AFFIDAVIT**

STATE OF MISSOURI )

) SS

COUNTY OF TANEY )

COMES NOW, Bruce Herschend, and being first duly sworn, on his oath states:

1. I am over the age of eighteen (18) and competent to testify to the following matters of my own knowledge and belief and am duly authorized to testify on behalf of R B D MARKETING, LLC, a Missouri limited liability company (the "Company").
2. I am an agent for, and Authorized Representative of the Company and am providing this Affidavit on behalf of the Company.
3. The Company is the proposed developer for the expansion of the Butterfly Palace and associated improvements located at 4106 W 76 Country Boulevard in Branson, Missouri (the "Project").
4. In my opinion, the Butterfly Palace as a whole serves a public purpose to the City of Branson, Missouri (the "City") through its promotion of tourism, economic development it drives within the community, and the unique service made available to residents of the City. The Project aims to further these public purposes by increasing the maximum daily capacity of the Butterfly Palace from approximately 950 visitors to 1350 visitors, adding a new event room to increase events available to visitors, and increasing the size of the aviary at the Butterfly Palace by thirty-two percent (32%).
5. The Project would not reasonably be anticipated to be sufficiently developed as proposed without the City's approval of the Development Agreement for the Expansion of the Butterfly Palace concerning implementation of incentives, among which includes the City's redirection of its sales taxes (the "Incentives") due to the substantial cost to expand the existing square footage of the Project necessary to accommodate for the increased amount of visitors and unique and substantial costs necessary to satisfy the United States Department of Agriculture requirements applicable to the Project's operation as a facility showcasing butterflies.
6. The Company cannot reasonably be expected to develop the Project as proposed without the approval of the Incentives.

[No further text on this page]

By:

Bruce Herschend, Authorized Representative

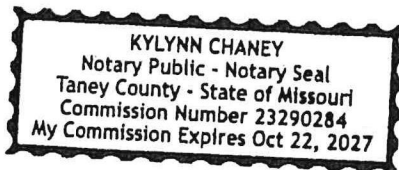
Subscribed and sworn to before me, a Notary Public, in and for said County and State this 9<sup>th</sup> day  
of MAY, 2025.

Kylynn Chaney  
Notary Public  
Printed Name: Kylynn Chaney

My Commission Expires:

OCTOBER 22, 2027

SEAL



Signature Page  
Public Purpose Affidavit  
Branson, Missouri