

Request for City Council Action

Date: December 22, 2015

Agenda Section: Consent Agenda No.	Originating Department: City Manager
Item: Resolution Approving a Redevelopment Agreement using Tax Increment Financing at 610 S. Illinois Ave. No. 5.11	

Background and Summary:

On December 27, 2012 the City Council approved an ordinance adopting tax increment financing (TIF) for Illinois-University Corridor TIF #2. TIF allows the increment property tax revenue created by new development within a redevelopment project area to be held in a special City fund to pay for certain redevelopment expenses incurred by the developer or the municipality.

One use of the increment funds is to reimburse private developers for eligible redevelopment project costs. The state statutes governing TIF specify the eligible costs that include property acquisition, demolition, site preparation, remodeling or rehabilitation of existing buildings, architectural and engineering fees, and a portion of interest expense on construction loans. The cost of new building construction is not an eligible expense. Reimbursement terms of TIF-eligible costs are specified in a redevelopment agreement between the City and the developer.

Attached for consideration by the City Council is a redevelopment agreement between the City and John Alexander, d/b/a SIDE-TRAXX, LLC, for reimbursement of renovation and remodeling costs associated with a proposed development at 610 S. Illinois Ave. Under the terms of this redevelopment agreement, the City will reimburse the developer a total of \$45,000.

Objectives of TIF include reduction or elimination of blighting conditions, enhancing the real estate tax base, and encouraging private investment. The proposed project represents a substantial contribution toward achievement of these objectives.

Recommended Action:

It is recommended that the City Council approve a resolution authorizing the Interim City Manager to enter into an economic development tax increment financing agreement with John Alexander, d/b/a SIDE-TRAXX, LLC, for the property located at 610 S. Illinois Ave.

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
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Council Action: Motion by _____ 2nd by _____ to _____

RESOLUTION NO. 2015-R-_____

A RESOLUTION APPROVING A REDEVELOPMENT AGREEMENT USING TAX INCREMENT FINANCING AT 610 SOUTH ILLINOIS AVENUE

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a) of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public, health, safety, morals and welfare; and

WHEREAS, the City of Carbondale established by Ordinance in compliance with State Law, a Tax Increment Allocation District, designated TIF #2 (Illinois-University Corridor); and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City of Carbondale to enter into a Redevelopment Agreement with John Alexander, d/b/a SIDE-TRAXX, LLC, for reimbursement of costs relating to remodeling and renovation of the property located at 610 South Illinois Avenue, a copy of which is attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. The City Manager of the City of Carbondale, Illinois, is hereby authorized to enter into a Redevelopment Agreement using Tax Increment Financing at 610 South Illinois Avenue, attached hereto and made a part hereof.

SECTION 2. The City Manager is hereby authorized to execute all documents and to take all other action necessary and proper to effectuate the entry into said agreement

SECTION 3. That this Resolution be spread at length upon the minute records of the City Council of the City of Carbondale, Illinois.

This Resolution is adopted at a regular meeting of the City Council of the City of Carbondale, Illinois on the 22nd day of December, 2015.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

REDEVELOPMENT AGREEMENT

City of Carbondale, Illinois / Illinois-University Corridor – TIF #2

This Redevelopment Agreement (this “**Agreement**”) dated as of this ____ day of _____, 2015, by and between the **CITY OF CARBONDALE**, an Illinois home rule municipal corporation (the “**Municipality**”), and SIDE-TRAXX, LLC and its manager, John Alexander, both personally and as manager (the “**Developer**”) and Campus Shopping Center, LLC (the “**Property Owner**”).

P R E A M B L E

WHEREAS, the Municipality has the authority to promote health, safety and welfare, including to prevent the spread of blight and deterioration and inadequate public facilities by promoting the development of and private investment in industry, business and housing and enhancing the marketability of property, thereby increasing the tax base of the Municipality and reducing unemployment; and

WHEREAS, the Municipality has by a series of ordinances (as supplemented and amended, the “**TIF Ordinances**”) undertaken a program and plan of redevelopment of a designated area in the Municipality by the adoption of Tax Increment Financing (“**TIF**”) and the adoption, approval and designation of the “Illinois-University Corridor Redevelopment Project Area #2, Redevelopment Plan and Project” (the “**Redevelopment Plan**”), Illinois-University Corridor – TIF #2 Redevelopment Project Area (the “**TIF Area**”) and the related Redevelopment Project (the “**Redevelopment Project**”), all pursuant to the Tax Increment Allocation Redevelopment Act, Illinois Compiled Statutes, Chapter 65, Section 5/11-74.4-1 *et seq.* (as supplemented and amended, the “**TIF Act**”); and

WHEREAS, pursuant to and in furtherance of the Redevelopment Plan, the Developer proposes to improve, repair, rehabilitate or otherwise develop certain property within the Area (the “**Development Area**”) as described in Exhibit A, attached hereto and by reference made a part hereof, which is owned by the Property Owner; and

WHEREAS, the Developer has proposed, as applicable: (i) public facilities (“**Public Facilities**”) and/or (ii) private development (“**Private Development**”) ((i) and (ii), collectively, as applicable, the “**Development Project**”) which are consistent with the land uses within the TIF Area and the Redevelopment Plan and is located in the TIF Area, wholly within the Area; and

WHEREAS, the Developer and Property Owner have requested that incentives related to the Private Development be provided by the Municipality from a maximum of **90%** incremental property taxes under Section 11-74.4-8 of the Act derived solely and only from the Development Area (subject to any prior pledge and other required prior charges, as provided herein, the “**Development Incremental Taxes**”), which incentives are consistent with those of

the Redevelopment Plan, and are set forth in Exhibit A; and

WHEREAS, consistent with the Redevelopment Plan and Redevelopment Project the Municipality has the authority under the TIF Act to incur specified redevelopment project costs (as defined in the TIF Act and provided for in the Redevelopment Plan, “**Eligible Redevelopment Project Costs**”) and to pay and/or reimburse the Developer for such Eligible Redevelopment Project Costs; and

WHEREAS, the Municipality by the TIF Ordinances has determined that all incremental property taxes in the Redevelopment Project Area (“**Incremental Taxes**”) are to be allocated to and when collected shall be paid to the City Treasurer for deposit into or credit to the Special Tax Allocation Fund (the “**Fund**”) for the TIF Area (including therein a Special Account (defined below) with respect to the Development Area) for the purpose of payment of or reimbursement for Eligible Redevelopment Project Costs or debt service with respect to obligations (including, as applicable, Tax Increment Redevelopment Revenue Note, in substantially the form set forth in Exhibit B, the “**TIF Note**”) issued by the Municipality to finance such Eligible Redevelopment Project Costs, only as specifically provided herein, and not otherwise; and

WHEREAS, the Municipality and the Developer desire to segregate in a special account within the Fund the Development Incremental Taxes, derived solely and only from the Development Area, which separate account shall be designated the “**Special Account**”; and

WHEREAS, the Municipality has determined that the Development Project requires the incentives requested as set forth in Exhibit A and that the Development Project will as a part of the Redevelopment Plan and Redevelopment Project, promote the health, safety and welfare of the Municipality and its citizens by attracting private investment to prevent blight and deterioration and to provide employment and generally to enhance the economy of the Municipality.

NOW, THEREFORE, THE MUNICIPALITY, THE DEVELOPER, AND THE PROPERTY OWNER, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, agree as follows:

1. ACQUISITION OF PROPERTY AND CONSTRUCTION OF PROJECT IMPROVEMENTS

The Property Owner represents and warrants that it owns the interest in the Development Area, as described in Exhibit A; the Developer represents and warrants that it has a lease hold interest in the Development Area as described in Exhibit A, and the Development Area is located wholly within the TIF Area.

The Developer shall commence acquisition and construction (which shall include, as applicable, repair, rehabilitation and remodeling of existing private facilities) of facilities constituting the Development Project, and complete such acquisition and construction, occupy

the buildings constituting the Development Project and begin operations as set forth in the timetable in Exhibit A.

2. INCENTIVES

The Municipality shall pay directly or reimburse the Developer for Eligible Redevelopment Project Costs permitted by the Act from Development Incremental Taxes (as generated solely and only from the Development Area, and not otherwise) and deposited into or credited to the Special Account of the Fund, and only for the term of the Redevelopment Plan or such lesser period as provided in this Agreement and the TIF Act. Unless specified in Exhibit A, and also subject to other required allocations under the TIF Act, including but not limited to school and library payments under Section 11-74.4-3(q)(7.5) and (7.7) of the TIF Act, substantial property tax objections in process and any required declaration of surplus for repayments to taxing districts.

Unless specified in Exhibit A, no TIF Note shall be issued to finance Eligible Redevelopment Project Costs, and if issued shall be sold only to the Developer or a bank or other financial institution, as arranged, if at all, by the Developer. If there is no TIF Note, reference herein to a TIF Note shall be given no effect. Any TIF Note shall be payable solely and only from Development Incremental Taxes, and not otherwise.

3. ADDITIONAL TERMS

The Municipality, the Developer, and the Property Owner agree the Municipality shall make the following payments under this Agreement:

(a) The Municipality shall make a payment of Twenty Thousand Dollars (\$20,000.00) following the execution of this Agreement.

(b) The Municipality shall make an additional payment of Fifteen Thousand Dollars (\$15,000.00) payable on February 1, 2016.

(c) The Municipality shall make a final payment of Ten Thousand Dollars (\$10,000.00) on June 1, 2016.

(d) No other payments shall be made or payable under this TIF Agreement to the Developer or Property Owner.

The Developer, in consideration of these payments set out above, agrees to close, vacate, and release any tenant rights the Developer has in its business "Sidetracks" located at 101 W. College Street, Carbondale, Illinois, on or before May 31, 2017, and transfer all Developer's rights to a stage and outdoor metal canopies and, in addition, any other items left at the Sidetracks site after May 31, 2017.

4. PAYMENT FOR ELIGIBLE PROJECT COSTS

Payments to the Developer (other than with respect to debt service on a TIF Note), or otherwise, including endorsement of the TIF Note, if any, for Eligible Redevelopment Project Costs shall be made only upon requisitions therefor (each a “**Requisition**”) submitted from time to time by the Developer to the Municipality’s Economic Development staff (the “**ED**”) or other officer or individual designated by the City Manager and upon approval of the City Manager (or the City Manager's designee, as the case may be), and in each case subject to the availability of funds in the Special Account, including, as the case may be, if at all, and not otherwise, as set forth in an applicable TIF Note), all as set out in and limited by Exhibit A and Section 3 of this Agreement.

All Requisitions must be accompanied by appropriately supporting documentation, including, as applicable, by way of example, and not limitation: verified bills or statements of suppliers, contractors, or professionals, lien waivers and contractor affidavits.

The City Manager (or designee, as the case may be), shall approve or disapprove a Requisition by written notice to the Developer within ten (10) business days after receipt of the Requisition. Approval of a Requisition will not be unreasonably withheld. If a Requisition is disapproved, the reasons for approval will be set forth in writing; and the Developer may resubmit the Requisition with such additional information as may be required, and the same procedures as set forth herein for initial submission shall apply to such resubmittals.

The Municipality, the Developer, and the Property Owner acknowledge that the determination of the qualification of Eligible Redevelopment Project Costs, the TIF Area and the Redevelopment Plan and Project and, therefore, qualification for payment and/or reimbursement under this Agreement are subject to changes made by amendments to the TIF Act, opinions of and interpretations by counsel with experiences in connection with TIF and municipal finance, administrative rules, and judicial or other interpretations during the term of this Agreement, and the Municipality has no obligation to the Developer to attempt to modify those decisions but will assist the Developer as to obtaining approval of Eligible Redevelopment Project Costs. The Developer assumes all risks related to qualification of Eligible Redevelopment Project Costs, the Area and the Redevelopment Plan and Project or the Development Project.

5. VERIFICATION OF TAX INCREMENT

It shall be the sole responsibility of the Developer to timely provide to the Municipality, on or before December 1 in each year, the following:

(a) The Illinois Business Identification Number of the business or businesses constituting the Development Project and within the Development Area.

(b) Certified copies of real estate tax bills for the tax year prior to the calendar year of this Agreement, and annually thereafter, certified copies of all paid real estate tax bills for the immediately preceding real estate tax year on each tax parcel constituting the Development Area.

The failure of the Developer to provide any information required in this Agreement shall be considered a material breach of this Agreement and shall be sufficient cause for the Municipality to deny payments under this Agreement to or in respect of the Developer, which payments are expressly conditioned upon the receipt of the foregoing information.

6. LIMITED OBLIGATION

The Municipality's obligations under this Agreement to pay debt service on any TIF Note and/or to pay or reimburse the Developer for Eligible Redevelopment Project Costs is a special and limited obligation, to be paid solely from Development Incremental Taxes in the Special Account of the Fund, and not otherwise. Any such obligation does not now and shall never constitute an indebtedness of the Municipality within the meaning of any constitutional or statutory provision and shall not constitute or give rise to a pecuniary liability of the Municipality or a charge or lien against the Municipality's general credit, funds, taxing power or otherwise, a condition precedent to the Municipality's execution hereof and to which the Developer and Property Owner hereby irrevocably assents.

7. EVENTS OF DEFAULT AND REMEDIES

Material failure or delay by either the Municipality, Developer or Property Owner to timely perform any term or provision of this Agreement shall constitute an **“event of default”** under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such event of default, immediately commence to cure, correct or remedy such event of default and thereafter proceed with diligence to cure such event of default. The party claiming such event of default shall give written notice of the claimed event of default to the other party specifying the event of default complained of. Except as required to protect against immediate, irreparable harm, the party asserting an event of default may not institute proceedings against the other party until thirty (30) days after having given such notice. If such event of default is cured within such thirty (30) day period, the event of default shall not be deemed to constitute a **“default”** under this Agreement. If the event of default is one which cannot reasonably be cured within a thirty (30) day period, upon request and with appropriate showings the cure period shall be extended for such time as is reasonably necessary for the curing of the same, so long as there is diligent proceeding to cure such event of default. If such event of default is cured within such extended period, the event shall not be deemed to constitute a default under this Agreement. However, an event of default not cured as provided above shall constitute a default under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any event of default or default shall not operate as a waiver of any such event of default or default of any rights or remedies it may have as a result of such event of default or default.

The sole remedy of the Developer or Property Owner in the event of a default by the Municipality under any of the terms and provisions of this Agreement shall be to institute legal action against the Municipality for specific performance or other appropriate equitable relief. Under no circumstances shall the Municipality be subject to any monetary liability or be liable for damages (compensatory or punitive or otherwise) under the provisions, terms and conditions of this Agreement. Except as to the foregoing, the parties shall have all remedies with

respect to this Agreement available under applicable law. Notwithstanding anything herein to the contrary, the Municipality shall be liable for no amount hereunder in excess of Incremental Taxes duly deposited into or credited to the Special Account.

8. LIMITED LIABILITY TO OTHERS

Except as otherwise expressly provided herein, the Municipality shall not be obligated to make any payments to any person other than the Developer, nor shall the Municipality be obligated to pay any contractor, subcontractor, mechanic, materialman providing services or materials to the Developer for or in respect of the Development Project.

9. TIME; UNAVOIDABLE DELAY

Time is of the essence of this Agreement. Provided, however, the Developer shall not be deemed in default with respect to any obligations under this Agreement on its part to be performed if the Developer fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the Municipality (or the Municipality's agents or, employees) or third parties, or any other similar cause beyond the reasonable control of Developer, including but not limited to delays in acquiring interests in or possession of real estate caused by the parties who are contractually obligated to convey and grant to the Developer, for which the Developer shall have a day for day extension for any deadlines hereunder, if such event is claimed in writing delivered within ten (10) days of the occurrence of the event giving rise thereto and otherwise shall have no extension.

10. ASSIGNMENT

The rights and obligations of Developer or Property Owner under this Agreement shall be assignable, in whole and not in part, with (i) not less than 20 business days' (or such lesser notice acceptable to the Municipality) written notice by the Developer or Property Owner to the Municipality and (ii) the written approval of such assignment by the Municipality, without which no such assignments shall be effective, including on such terms and conditions as the Municipality shall require; provided that no such assignment shall be deemed to release the Developer or Property Owner of its obligations to the Municipality under this Agreement unless the written consent of the Municipality to the release of the Developer's or Property Owner's obligations is first obtained.

11. PREPAYMENTS

The Municipality absolutely reserves the right, prior to the expiration of the term of this Agreement and to the extent lawful, in its sole discretion, to prepay all or any part of its obligations under this Agreement or any TIF Note.

12. WAIVER

Any party to this Agreement may elect to waive any remedy it may have hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

13. SEVERABILITY

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

14. NOTICES

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

If to the Developer:

SIDE-TRAXX, LLC
610 S. Illinois Ave.
Carbondale, IL 62901
Attn: John C. Alexander
Tel: _____
Fax: _____

With a copy to:
Webb Smith, Attorney
102 Orchard Drive
Carbondale, IL 62901
Tel: (618) 457-3547
Fax: (618) 457-8017

If to the Property Owner:

Campus Shopping Center
116 W. Brewster Road
Herrin, IL 62948
Attn: _____
Tel: _____
Fax: _____

With a copy to:

Tel: _____
Fax: _____

If to the Municipality:

City of Carbondale
200 South Illinois Street
Carbondale, IL 62902-2047
Attn: City Manager
Tel: (618) 549-5302
Fax: (618) 457-3283

With a copy to:
P. Michael Kimmel, City Attorney
200 South Illinois Street
Carbondale, IL 62901
Tel: (618) 549-5302
Fax: (618) 457-3283

15. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the

Municipality, the Developer, and the Property Owner, to and, subject to Section 10 above, to their respective successors and assigns.

16. NO JOINT VENTURE, AGENCY, OR PARTNERSHIP CREATED

Neither anything in this Agreement nor any acts of the Municipality and/or the Developer, or Property Owner under this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between them. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the Municipality, in his or her individual capacity, and neither the members of the Corporate Authorities nor any other official or employee of the Municipality shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

17. INDEMNIFICATION

(A) Except for any claims, suits or actions caused by the intentional acts of the Municipality or the Municipality's employees, agents, officers or contractors, the Developer or Property Owner, and any person claiming rights hereunder through the Developer or Property Owner, agrees to indemnify and defend (including the payment of the Municipality's attorneys fees and related costs) the Municipality from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract or any other claim or demand brought against the Municipality arising from any alleged claims, acts or omissions in connection with the Private Development, the Development Project, the Development Area and this Agreement, whether or not suit is filed.

(B) In order further to induce the Municipality to enter into and accept its obligations and undertakings hereunder and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to the extent lawful, the Developer and Property Owner agree, as follows:

(a) **Definitions.** As used in this Section, certain additional terms shall have the meanings, as follows:

“Environmental Laws” means all applicable laws, governmental rules and regulations of any federal, state, regional or local governmental agency, including, without limitation, all applicable federal, state and local laws, rules and regulations pertaining to air and water quality, hazardous waste, waste disposal and other environmental matters, including, but not limited to, the Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation and Recovery, Comprehensive Environmental Response, Compensation and Liability, Illinois Environmental Protection and Illinois Responsible Property Transfer Acts.

“Hazardous Substance” means any substance that is at any time defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations, including,

without limitation, the Environmental Laws, as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or “EP toxicity,” including, without limitation, asbestos, polychlorinated biphenyls and also including petroleum products, by-products and wastes, or by-products associated with the extraction, refining or use of petroleum or petroleum products, whether or not so listed or classified in such laws or regulations.

“Hazardous Substance Activity” means any actual, proposed or threatened storage, holding, existence, use, release, emission, discharge, generation, processing, abatement, removal, cleanup or detoxification, disposition, handling or transportation of any Hazardous Substance from, under, into or on or in respect of the property subject to this Agreement or the surrounding property, or any other activity or occurrence that causes or would cause such event to exist.

(b) Representations and Warranties of the Developer. The Developer represents and warrants to the Municipality that: **(a)** the Developer will be in compliance with all applicable Environmental Laws relating to the Development Area and the use of the property subject to this Agreement; **(b)** except in compliance with all applicable Environmental Laws, the Developer has not engaged in any Hazardous Substance Activity on such property, nor to the best knowledge of the Developer, after due inquiry and investigation, except for none, has any Hazardous Substance Activity otherwise occurred in violation of any applicable Environmental Laws; **(c)** except for none, no investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or, to the best knowledge of the Developer, after due inquiry and investigation, threatened in connection with any Hazardous Substance Activity or alleged Hazardous Substance Activity; **(d)** the use of the property subject to this Agreement for its intended purpose is not expected to result in any Hazardous Substance Activity in violation of any applicable Environmental Laws; **(e)** except for none, no notice of any order, directive, complaint or other communication, written or oral, has been made or issued by any governmental agency nor has the Developer received a written notice from any other third party alleging the occurrence of any Hazardous Substance Activity in violation of any applicable Environmental Laws or demanding payment or contribution for environmental damage or injury to the Development Area; and **(f)** except for none, underground storage tanks or underground Hazardous Substance deposits are or were located on the Development Area, except to the extent that any of the foregoing which were located on the property are in process of being removed, remediated or taken out of service in accordance with all applicable Environmental Laws.

(c) Covenants of the Developer. The Developer shall at all times it controls all or any part of the Development Area: **(a)** keep and maintain the Development Area in compliance with, and shall not cause or permit such property to be in violation of, any Environmental Laws; **(b)** not engage in or otherwise permit the occurrence of any Hazardous Substance Activity on the Development Area except in compliance with all

applicable Environmental Laws; (c) immediately advise the Municipality in writing of (i) any and all enforcement, cleanup, removal, mitigation or other governmental or regulatory acts instituted, contemplated or threatened pursuant to any Environmental Laws affecting the Development Area, (ii) all claims made or threatened by any third party against the Developer or such property relating to the damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substance Activity (the matters set forth in clauses (i) and (ii) above hereinafter being referred to as “**Hazardous Materials Claims**”), (iii) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development Area that could cause such property or any part thereof to be the subject of a claim or cause of action under any Environmental Laws, or the Developer's receipt of any notice in connection with the foregoing, and (iv) the Developer's discovery of any occurrence or condition on the property subject to this Agreement or any real property adjoining or in the vicinity of the Development Area and such property which could subject the Developer or such property to any restrictions on ownership, occupancy, transferability or use of such property under any Environmental Laws.

(d) **Indemnity.** The Developer and Property Owner (and all parties claiming rights hereunder through the Developer or Property Owner) hereby agrees to indemnify, defend and hold harmless the Municipality from and against any and all claims and liabilities under Environmental Laws. The Developer or Property Owner (and all parties claiming rights hereunder through the Developer) shall pay when due any judgments or claims for damages, penalties or otherwise against the Municipality, and shall assume the burden and expense of defending all suits, administrative proceedings and resolutions of any description with all persons, political subdivisions or governmental agencies arising out of the occurrences set forth in this Section. If such payment is not made, the Municipality, at its sole discretion, may file suit against the Developer (and all parties claiming rights hereunder through the Developer) to compel such payment. All funds advanced by the Municipality concerning this Section shall bear interest at either (i) the highest rate born by the TIF Note, if any, plus 4% per annum, or (ii) if there is no TIF Note at a rate equal to the published prime rate in The Wall Street Journal plus 4% per annum (in either case, (i) or (ii), the “**Advance Rate,**” which rate may change from day to day) from the date or dates paid until paid by the Developer (and all parties claiming rights hereunder through the Developer).

(e) **Separate Obligation.** The obligations of the Developer and Property Owner (and all parties claiming rights hereunder through the Developer) under this Section are independent of, and shall not be measured or affected by, (i) any other amounts at any time owing pursuant to this Agreement, (ii) any other obligations of the Developer or Property Owner (and all parties claiming rights hereunder through the Developer) hereunder, including to holder(s) of the TIF Note, or any other agreements delivered in connection therewith, whether they relate to compliance with Environmental Laws or the use or discharge of Hazardous Substances or otherwise, (iii) the consideration given to any party in order to acquire the property subject to this Agreement, or any portion thereof, (iv) the modification, expiration or termination of the Developer's obligations under any other document or instrument relating thereto, or (v) the discharge or

repayment of any portion of any other obligations.

(f) **Survival.** The Developer's and Property Owner's (and all parties claiming rights hereunder through the Developer or Property Owner) obligations hereunder shall survive the assignment, subleasing or other transfer, encumbrancing or disposition of any property subject to this Agreement. The rights of the Municipality under this Section shall be in addition to any other rights and remedies of such Municipality against the Developer under any other document or instrument now or hereafter executed by the Developer, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights.

(g) **Obligations of the Developer or Property Owner Payable Upon Demand.** All obligations of the Developer or Property Owner hereunder (including (A) above and (h) below) shall be payable on demand, and any amount due and payable hereunder to the Municipality by the Developer or Property Owner (and all parties claiming rights hereunder through the Developer or Property Owner) which is not paid immediately after written demand therefor from the Municipality with a reasonably detailed explanation of the amounts demanded shall bear interest from the date paid at the Advance Rate.

(C) **Payment of Costs.** The Developer or Property Owner (and all parties claiming rights hereunder (including (A) above) through the Developer) shall pay to the Municipality all costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel) incurred by the Municipality in connection with this Section 16 or the enforcement hereof.

(D) **Successors and Assigns; Beneficiaries.** This Section shall be binding upon the Developer and Property Owner (and all parties claiming rights hereunder through the Developer), and its successors and assigns, and shall inure to the benefit of and shall be enforceable by the Municipality, and its successors and assigns.

IN WITNESS WHEREOF, the Municipality, the Developer, and the Property Owner hereto have caused this Agreement to be executed by their duly authorized officers on the above date.

(SEAL)

CITY OF CARBONDALE, ILLINOIS
an Illinois municipal corporation

Attest:

By: _____
City Clerk

By: _____
City Manager

Approved:

By: _____
City Attorney

PROPERTY OWNER:

Name: Campus Shopping Center, LLC

By: _____
Its: _____

DEVELOPER:

SIDE-TRAXX, LLC and John Alexander, both personally and as Manager of SIDE-TRAXX, LLC

By: _____
Its: _____

Approved:

Counsel to Developer

EXHIBIT A

DEVELOPMENT PROJECT

A. GENERAL NARRATIVE DESCRIPTION OF DEVELOPMENT PROJECT:

Private Development: Tenant improvements to existing property located at 610 South Illinois Avenue, Carbondale, IL, 62901.

Public Improvements/Infrastructure: N/A

- | | | |
|-----|--|-----------|
| (1) | Private Construction (including Renovation, Repair & Remodeling) | |
| a. | Estimated costs | \$ 45,000 |
| b. | Estimated Eligible Redevelopment Project Costs | \$ 45,000 |
| c. | Attach site plans or elevations (upon request) | |
| (2) | Public Construction | |
| a. | Estimated costs | \$ N/A |
| b. | Estimated Eligible Redevelopment Project Costs | \$ N/A |
| c. | Attach site plans or elevations (upon request) | |

(3) Jobs Created or Retained (full-time equivalents, estimated)

	<u>Created</u>	<u>Retained</u>
Construction:		
Operational:		

B. TIMETABLE

Private:

Financing	_____N/A_____
Commence Construction	
___12/15/15_____	
Complete Construction	
___06/30/16_____	
Opening	
___07/01/16_____	

Public:

Financing	___N/A_____
Commence Construction	___N/A_____
Complete Construction	___N/A_____
Opening	___N/A_____

C. ELIGIBLE REDEVELOPMENT PROJECT COSTS

ALLOCATED AMOUNTS(\$)

Rehabilitation Renovation/Remodeling
 ___\$45,000_____

TOTAL

\$ _____

Tax increment allocations under this Agreement shall continue until any TIF Note and/or all Eligible Redevelopment Project Costs related to the Development Project are paid or for 20 years, commencing _____, 201__, whichever comes first. The payment of any TIF Note and/or Eligible Redevelopment Project Costs is subject to the availability of Development Incremental Taxes. No Interest Subsidy payments shall be made with any TIF Note is outstanding and unpaid. Interest Subsidy is not subject to TIF Note or other debt financing.

D. DEVELOPMENT AREA

(1) DEVELOPER'S INTEREST IN DEVELOPMENT AREA:

(if other than fee ownership, describe and attach lease or other applicable document): _____

(2) DEVELOPMENT AREA:

Street Address: __610 S. Illinois Ave., Carbondale, IL, 62901_____

Legal Description:

E. TIF NOTE

(a) There (x-out, as applicable) _____ is/is not _____
Municipality/Initial Developer/Initial Municipality/Initial Developer/Initial
a TIF Note related to this Agreement. (Initial whether, as applicable, there is or is not to
be a TIF Note.)

(b) Terms of TIF Note:

- (i) Interest Rate: _____
- (ii) Term: _____
- (iii) Other: _____

