

## **AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**

This **AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (this “Agreement”) is made and entered into as of December \_\_\_\_, 2021 (the “Effective Date”) by and between the **CITY OF CAPE GIRARDEAU, MISSOURI**, a home-rule city organized and existing under the laws of the State of Missouri (the “City”), and **RESTOREME LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Developer”).

### **RECITALS:**

1. The Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the “Act”) authorizes municipalities to undertake redevelopment projects in blighted, conservation or economic development areas, as defined in the Act.

2. Pursuant to Ordinance No. 5340, adopted on September 21, 2020, the City Council approved the “811 Broadway Tax Increment Financing Redevelopment Plan” (the “Redevelopment Plan”), designated the redevelopment area described in the Redevelopment Plan (as further described in **Exhibit A** attached hereto, the “Redevelopment Area”) as a “redevelopment area” pursuant to the Act, and approved the redevelopment project described in the Redevelopment Plan (the “Redevelopment Project”).

3. The Redevelopment Project generally consists of renovating the interior and exterior of 811 Broadway to accommodate commercial lease spaces (initially, a coffee shop) and two luxury apartments on the first floor and four additional luxury apartments on the second floor.

4. The Developer has requested tax increment financing assistance to reimburse the Developer for a portion of the costs of completing the Redevelopment Project.

5. Pursuant to Ordinance No. 5339, adopted on September 21, 2020, the City and the Developer entered into a Redevelopment Agreement dated as of September 28, 2021 (the “Prior Agreement”).

6. Pursuant to Ordinance No. \_\_\_\_, adopted on December 20, 2021, the City Council has authorized the City to enter into this Agreement, which amends and restates the Prior Agreement, to provide the terms and conditions upon which the Developer will construct the Redevelopment Project and be reimbursed for certain costs, as contemplated by the Act and the Redevelopment Plan.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **Section 1. Development.**

(a) The Developer hereby agrees to complete the Redevelopment Project at its own expense no later than July 31, 2022. Completion of the Redevelopment Project shall be deemed to have occurred when the City issues occupancy permits pursuant to its municipal code for the building at 811 Broadway. Within 180 days after receipt of the last occupancy permit, the Developer may submit a Certificate of Reimbursable Project Costs in substantially the form attached hereto as **Exhibit B** evidencing the costs of the Redevelopment Project for which the Developer requests reimbursement pursuant to **Section 4** below.

(b) The City shall review the Certificate of Reimbursable Project Costs and provide written objections, if any, to the Developer within 30 days from receipt thereof. If any objections are provided, the Developer shall cure such objections and resubmit the Certificate of Reimbursable Project Costs. If no objections are provided within 30 days of receipt, the Developer shall advise the City in writing that the Developer has submitted a Certificate of Reimbursable Redevelopment Project Costs and that the City has not yet approved or objected to the certificate. The City shall have an additional 15 days following receipt of the Developer's written notice to provide its approval of or objections to the Certificate. The Certificate of Reimbursable Project Costs shall be deemed approved by the City on the 16th day following receipt of the Developer's written notice, unless affirmatively objected to or approved by the City prior to such date.

### **Section 2. Submission and Approval of Construction Plans; Construction Standards.**

(a) The Developer shall submit construction plans for the Redevelopment Project to the City as follows:

(i) The Developer will submit construction plans for the Redevelopment Project and the City will review such plans for compliance with all applicable laws, statutes and ordinances, rules and regulations, including but not limited to, the safety and zoning regulations of the City. The Developer will not begin the Redevelopment Project until it has received all requisite approvals from the City and other applicable agencies as required by federal, state, and local law, in accordance with a construction schedule agreed upon by the City and the Developer.

(ii) The Developer may make changes to the construction plans in accordance with federal, state and local law.

(b) The Developer will complete the Redevelopment Project according to all applicable federal, state and local ordinances, laws, regulations and codes. The City may inspect the Redevelopment Project in accordance with the applicable federal, state and local ordinances, laws, regulations and codes to ensure proper completion thereof.

### **Section 3. Release and Indemnification.**

(a) Notwithstanding anything herein to the contrary, the City and its governing body, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever if any ordinance adopted by the City or transaction completed by the City in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

(b) The Developer releases from and covenants and agrees that the City and its governing body, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the governing body, officials, agents, employees and independent contractors thereof against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction of the Redevelopment Project, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(c) The Developer agrees to indemnify, defend and hold harmless the City and its governing body, officials, agents, employees and independent contractors from and against any and all suits, claims and attorneys' fees resulting from, arising out of, or in any way connected with (i) the construction of the Redevelopment Project or (ii) the negligence or willful misconduct of the Developer or its officers, managers, agents, employees or independent contractors in connection with the management, development, redevelopment and construction of the Redevelopment Project, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(d) The Developer agrees to indemnify, defend and hold harmless the City and its governing body, officials, agents, employees and independent contractors from and against any and all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: (i) any now-existing or hereafter-arising violation, actual or alleged, or any other liability, under or in connection with any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Redevelopment Project in connection with the construction of the Redevelopment Project, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen before the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; or (ii) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like.

(e) The City and its governing body, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, managers, agents, employees or independent contractors or any other person who may be about the Redevelopment Area or the Redevelopment Project due to any act of negligence of any person, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(f) No member of the governing body, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer in the event of a default or breach by any party under this Agreement.

(g) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of its governing body, officials, agents, employees or independent contractors in their individual capacities.

#### **Section 4. Installment Payments by the City.**

(a) For purposes of **Sections 4** and **5** of this Agreement, the following terms shall have the following meanings:

“Available TIF Revenues” means all Payments in Lieu of Taxes and Economic Activity Taxes (as defined in the Act) deposited in the Special Allocation Fund. Notwithstanding the foregoing, Available TIF Revenues will not include (i) incremental utility tax revenues (if any) unless the Developer provides the City with copies of utility bills from businesses located in the Redevelopment Area prior to the end of the applicable Calculation Period, (ii) any Economic Activity Taxes that the City Council determines, in its sole discretion, are attributable to businesses that relocate into the Redevelopment Area from elsewhere in the City, and (iii) any revenues that are subject to a pending challenge or protest.

“Calculation Period” means initially, the period from September 21, 2020 to the last day of the second month preceding the first Payment Date (e.g., if the first Payment Date is July 1, 2022, the initial Calculation Period runs through May 31, 2021); and thereafter, each period from the end of the previous Calculation Period to the last day of the second month preceding the next Payment Date, except that the Calculation Period for the August 31, 2043 Payment Date will be from the end of the penultimate Calculation Period to July 31, 2043.

“Payment Date” means every January 1, April 1, July 1 and October 1 following the City’s approval or deemed approval of a Certificate of Reimbursable Costs pursuant to **Section 1** and also August 31, 2043 (i.e., the date that is 23 years from the approval of the ordinance approving the Redevelopment Project).

“Reimbursable Redevelopment Project Costs” means the costs of the Redevelopment Project identified on the Certificate of Reimbursable Project Costs approved by the City in accordance with this Section in the maximum amount of \$475,689.

“Special Allocation Fund” means the fund created by Ordinance No. 5340, pursuant to which certain Payments in Lieu of Taxes and Economic Activity Taxes are deposited by operation of the Act.

(b) On each Payment Date, the City shall apply the Available TIF Revenues during the preceding Calculation Period as follows:

(i) The sum of \$500 shall be retained by the City as an administrative fee; and

(ii) The remaining Available TIF Revenues shall be paid to the Developer or its designee for the reimbursement of the Reimbursable Redevelopment Project Costs.

(c) On each Payment Date, the City shall provide the Developer with a written accounting showing the amount of Available TIF Revenues collected during the Calculation Period, the application of the Available TIF Revenues pursuant to this Section and the outstanding balance of the Reimbursable Redevelopment Project Costs (including accrued but unpaid interest) not yet reimbursed.

(d) Notwithstanding anything to the contrary contained herein, in lieu of the payments described in (b), the City may issue bonds, notes or other obligations secured by Available TIF Revenues

and use the sale proceeds of the bonds, notes or other obligations to pay the Reimbursable Redevelopment Project Costs due to the Developer. The Developer shall cooperate in good faith if the City decides to pursue any such issuance of bonds, notes or other obligations.

(e) The Developer shall cause all businesses generating taxable retail sales located in the Redevelopment Area to provide a consent to the release of confidential sales tax information to the City, in substantially the form of **Exhibit C** hereto, for the limited purpose of preparing and approving budgets, appropriation requests and other actions contemplated by this Agreement. The Developer shall also require each “seller” (as that term is defined in Section 144.010(10) of the Revised Statutes of Missouri) located in the Redevelopment Area to supply or cause to be promptly supplied to the City’s Finance Director, its monthly or quarterly sales tax information in a form substantially similar to the sales tax returns filed by such seller with the Missouri Department of Revenue.

#### **Section 5. Annual Appropriation of Economic Activity Taxes.**

(a) The City’s obligation to pay Economic Activity Taxes pursuant to this Section is limited to those funds budgeted and appropriated for that purpose during the City’s then-current fiscal year. The City agrees to cause the officials and employees in charge of drafting a budget to include the appropriations contemplated by this Agreement in the annual budgets presented to the City Council for its consideration.

(b) The obligation of the City to pay Economic Activity Taxes hereunder constitutes a current expense of the City, is from year-to-year, and does not constitute a mandatory payment obligation of the City in any fiscal year beyond the then-current fiscal year of the City. The City’s obligation to pay Economic Activity Taxes hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City.

#### **Section 6. Representations, Warranties and Covenants.**

(a) *By the City.* The City represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(i) The City is a home-rule city organized and existing under the laws of the State of Missouri and its charter, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(ii) To the best of the City’s knowledge, there are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

(b) *By the Developer.* The Developer represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(i) The Developer is a limited liability company duly organized and existing under the laws of the State of Missouri and has power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

(ii) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.

(iii) There are no lawsuits either pending or threatened that would affect the ability of the Developer to proceed with the completion or operation of the Redevelopment Project.

(iv) The Developer agrees to maintain commercial general liability insurance for the Redevelopment Project in a policy amount of not less than the then-current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as may be revised annually by the Missouri Department of Insurance. The Developer further agrees to name the City as an additional insured with respect to such insurance policy and to annually provide evidence of such insurance policy to the City.

(v) The Developer agrees to annually provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City's legal counsel) that insures the Developer's obligations to indemnify the City, as provided in this Agreement.

**Section 7. Termination.** This Agreement shall terminate upon the earliest of any of the following:

(a) written notice is provided by the aggrieved party to the defaulting party to terminate this Agreement pursuant to **Section 8(b)**;

(b) the satisfaction of all payments due under **Section 4(b)**; or

(c) August 31, 2043.

**Section 8. Default and Remedies.**

(a) *Events of Default.* The following shall be events of default (each, an "Event of Default") with respect to this Agreement:

(i) If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party, in writing and delivered to the other party pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made; or

(ii) Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.

(b) *Remedies on Default.* In the case of an Event of Default by a party hereto or any successor to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default within 60 days after receipt of such notice. If the Event of Default is not cured or remedied within such 60 day period (or, in the case of an Event of Default that cannot be cured within a 60 day period, the defaulting party does not make reasonable progress toward curing the default and/or does not notify the aggrieved party of when such default will be

cured), then the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceeding to compel specific performance by the party in default of its obligations.

(c) *Other Rights and Remedies of Parties; Delay in Performance Waiver.*

(i) Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a party under this Section or with respect to the particular Event of Default, except to the extent specifically waived in writing by the other party.

(ii) The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by another party. No waiver made by any party with respect to the performance, nor the manner of time thereof, or any obligation of another party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of another party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect to regard to any other rights of the party making the waiver or any other obligations of another party.

(iii) Neither the City nor the Developer, nor any successor in interest, as the case may be, shall be considered in breach of, or in default of, any of its obligations under this Agreement or otherwise with respect to the Redevelopment Project, or progress in respect thereto, in the event of delay in the performance of any such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, acts of a public enemy, acts of federal, state or local government (other than the City), litigation instituted by third parties, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of such obligations by the City or the Developer shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this Section, shall within 30 days after the beginning of any such enforced delay, have first notified the other party thereof in writing, of the cause or causes thereof, and requested an extension of the period of delay.

**Section 9. Amendment or Modification.** The parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the parties hereto.

**Section 10. Third Party Rights.** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

**Section 11. Scope.** This Agreement constitutes the entire Agreement between the parties, and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.

**Section 12. Severability.** If any part, term or provision of this Agreement is held by a court of law to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of this Agreement.

**Section 13. Transferability.** This Agreement may not be assigned by the Developer without the express written approval of the City unless such assignment is to an entity succeeding to all or substantially all of the business of the Developer or to an entity controlled by the Developer or under common control with the Developer (in which case the Developer shall provide notice to the City of such assignment within ten days from the date of such assignment).

**Section 14. Notice.** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, return receipt requested, and addressed as follows:

To the City:                      City of Cape Girardeau  
   401 Independence Street  
   Cape Girardeau, Missouri 63702  
   Attn: City Manager

With copies to:                City of Cape Girardeau  
   401 Independence Street  
   Cape Girardeau, Missouri 63702  
   Attn: City Attorney

And:                                Gilmore & Bell, P.C.  
   One Metropolitan Square  
   211 North Broadway, Suite 2000  
   St. Louis, Missouri 63102  
   Attn: Mark D. Grimm, Esq.

To the Developer:            Restoreme LLC  
   444 Fraser Rdg  
   Jackson, Missouri 63755  
   Attn: Suzanne Hightower

**Section 15. Immunity.** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

**Section 16. Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Cape Girardeau County, Missouri. The Developer expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.



**Section 17. Missouri Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 18. Federal Work Authorization Program.** Simultaneously with the execution of this Agreement, the Developer will provide the City with an affidavit and documentation meeting the requirements of Section 285.530 of the Revised Statutes of Missouri.

**Section 19. Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument.

**Section 20. City Fees.** Simultaneously with the execution of this Agreement, the Developer shall pay the City the sum of \$500 for legal and other fees and expenses incurred in connection with the preparation, negotiation and approval of this Agreement and the Redevelopment Plan.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and the City has caused its seal to be affixed hereto and attested as of the date first written above.

**CITY OF CAPE GIRARDEAU, MISSOURI**

By: \_\_\_\_\_  
Name: Scott A. Meyer  
Title: City Manager

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Gayle L. Conrad  
Title: City Clerk

**RESTOREME LLC**

By: \_\_\_\_\_  
Name: Suzanne Hightower  
Title: Member

**EXHIBIT A**

**LEGAL DESCRIPTION OF REDEVELOPMENT AREA**

**EXHIBIT B**

**FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS**

Certificate of Reimbursable Project Costs

TO: City of Cape Girardeau, Missouri  
401 Independence Street  
P.O. Box 617  
Cape Girardeau, Missouri 63702  
Attention: City Manager

**Re: 811 Broadway Redevelopment Project**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Amended and Restated Redevelopment Agreement dated as of December \_\_, 2021 (the “*Agreement*”) between the City of Cape Girardeau, Missouri (the “*City*”) and Restoreme LLC (the “*Developer*”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a Reimbursable Redevelopment Project Cost that was incurred in connection with the completion of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been paid by the Developer and are reimbursable under the Act and the Agreement.
3. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
4. All necessary permits and approvals required for the Redevelopment Project are in full force and effect.
5. If any cost item to be reimbursed under this Certificate is deemed not to constitute a “redevelopment project cost” within the meaning of the Act, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.
6. The Developer is not in default or breach of any term or condition of the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**RESTOREME LLC**

By: \_\_\_\_\_  
Suzanne Hightower, Member

Approved for Payment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF CAPE GIRARDEAU, MISSOURI**

By: \_\_\_\_\_  
[Name], [Title]

Schedule 1  
To Certificate of Reimbursable Project Costs

## **EXHIBIT C**

### **CONSENT TO RELEASE OF CONFIDENTIAL SALES TAX INFORMATION**

To facilitate the reporting requirements that are applicable to the 811 Broadway Tax Increment Financing Redevelopment Plan (the “Redevelopment Plan”) pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, RSMo., as amended (the “Act”), [Seller] hereby consents to the inclusion, within any reports required by the Act, of the sales tax revenue data for its operations within the Redevelopment Area described in the Redevelopment Plan.

Dated: \_\_\_\_\_, 20\_\_

**[Seller]**

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

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

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