

Introduced by \_\_\_\_\_ Council Bill No. R 86-09

**A RESOLUTION**

authorizing preliminary funding agreements with The Tiger Columns, LLC and 10<sup>th</sup> & Locust, LLC relating to tax increment financing of redevelopment projects.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a preliminary funding agreement with The Tiger Columns, LLC relating to redevelopment of the Tiger Hotel building located at 23 South Eighth Street. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. The City Manager is hereby authorized to execute a preliminary funding agreement with 10<sup>th</sup> & Locust, LLC relating to redevelopment of properties located at 116 South Tenth Street, 120 South Tenth Street, 122 South Tenth Street and an adjacent city-owned surface parking lot. The form and content of the agreement shall be substantially as set forth in "Exhibit B" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

## PRELIMINARY FUNDING AGREEMENT

**THIS PRELIMINARY FUNDING AGREEMENT** (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF COLUMBIA, MISSOURI** (the "City") and **THE TIGER COLUMNS, LLC** (the "Company").

### RECITALS

1. The Company desires to develop or redevelop the Tiger Hotel building located at 23 South Eighth Street (the "Proposed Redevelopment Area").

2. The Company has submitted an Application for Tax Increment Financing (the "Application") and application fee of ten thousand dollars (\$10,000) (the "Application Fee") to the City and the City desires to explore the feasibility of financing a portion of the costs of developing or redeveloping the Proposed Redevelopment Area through the use of tax increment financing pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the "Act"), as described in the Application.

3. Subject to the terms of this Agreement, the City desires that the Company advance funds to the City to enable the City to pay certain preliminary start-up costs in connection with the City's consideration of establishing the Proposed Redevelopment Area, which costs (together with the Application Fee) are eligible for reimbursement to the Company in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Advance of Funds.** The City hereby acknowledges receipt from the Company of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be used as initial preliminary funding in connection with the consideration by the City of the adoption of tax increment financing in the Proposed Redevelopment Area (the "Preliminary Funds"). The City shall use the Preliminary Funds to pay or reimburse the City for payment of actual costs incurred by the City for services provided by such consultants and advisors (including, but not limited to attorneys, planners, and financial consultants) as the City shall deem advisable from time to time, in connection with the City's review of a redevelopment plan, and the negotiation of a redevelopment agreement as provided herein, and for expenses incurred by the City (such as mailing, publication and similar costs) in connection with the foregoing. The parties acknowledge that such amount is a substantial sum and agree to use their best efforts to work together to reduce the total costs to be paid out of the Preliminary Funds.

2. **Disbursement.** Subject to the remaining provisions of this Agreement, the City shall disburse Preliminary Funds for fees and expenses incurred or to reimburse the City for fees and expenses previously paid by the City upon receipt of (a) invoices for work performed by consultants and advisors; (b) invoices and/or receipts for out-of-pocket expenses incurred by such parties or the City in connection with the planning and legal work described above; and (c) such other supporting documentation as may be requested by the City. The City shall keep accurate records of all such disbursements, including an itemization of the fees and expenses so paid and copies of all invoices and receipts. The City shall use

reasonable care in ascertaining that the fees and expenses paid from the Preliminary Funds are fair and reasonable.

**3. Copies of Disbursement Requests.** The Company may request copies of the City's disbursement records (as maintained pursuant to Paragraph 2 above) by written request to the Assistant City Manager. Upon receipt of such request, the City shall promptly mail the Company copies of its disbursement records for the time period so requested.

**4. Repayment of Preliminary Funds Expended.**

**a.** The Preliminary Funds disbursed by the City pursuant to the terms hereof shall only be repaid to the Company from the proceeds of Obligations (as that term is defined in the Act) issued by the City, if any, in connection with any redevelopment plan for the Proposed Redevelopment Area adopted within one year after the date of this Agreement.

**b.** If the City for any reason fails to approve TIF for the Proposed Redevelopment Area, this Agreement shall be deemed terminated and any unexpended Preliminary Funds shall be refunded to Company as set forth in Paragraph 8 hereof.

**5. Preparation of Redevelopment Plan; Consideration of Tax Increment Financing.** The City agrees, provided that a redevelopment plan meeting the requirements of the Act is submitted by the Company, to (a) to request that the tax increment financing commission conduct a public hearing pursuant to the Act and (b) to the extent within its control, to take all other actions precedent to the consideration by the City Council of the approval of the redevelopment plan and the adoption of tax increment financing; provided, that nothing herein shall obligate the City to approve such redevelopment plan or adopt tax increment financing.

**6. Company's Right of Termination.** The Company may terminate this Agreement at any time in its sole discretion upon giving the City 10 days' written notice; whereupon 10 days following Company's delivery of said notice this Agreement shall be deemed terminated. The City shall pay to Company, within 60 days after the Company delivers notice of its termination under this Paragraph, all Preliminary Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed by the City or its consultants, as specified in Paragraph 1 hereof, through the date of termination.

**7. City's Right of Termination.** The City may terminate this Agreement upon giving the Company 10 days' written notice if (a) a redevelopment agreement is not executed within a reasonable time (as determined by the City in its reasonable discretion), or (b) all of the initial Preliminary Funds advanced hereunder have been spent and the Company does not provide additional Preliminary Funds to the City. The City shall pay to the Company, within 60 days after the City delivers notice of its termination of this Agreement under this Paragraph, all Preliminary Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed by the City or its consultants, as specified in Paragraph 1 hereof, through the date of termination.

**8. Excess Preliminary Funds.** If the City does not expend all of the Preliminary Funds as provided herein, the City shall immediately return the remainder of the Preliminary Funds to the Company. Notwithstanding anything to the contrary herein, the parties agree that the City shall not return any portion of the Application Fee to the Company, regardless of whether or not the amount of the Application Fee exceeds the amount of disbursements made by the City pursuant to Paragraph 2 hereof.

**9. No Third Party Beneficiaries.** This Agreement constitutes a contract solely between the City and the Company. No third party has any beneficial interest in or derived from this Agreement.

**10. Notices.** All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, facsimile, or first class mail, postage prepaid, to the parties as set forth below:

**If to the City:**

City of City of Columbia  
P.O. Box 6015  
Columbia, Missouri 65205  
Attention: Assistant City Manager

**If to the Company:**

The Tiger Columns, LLC  
23 South Eighth Street  
Columbia, Missouri 65201  
Attention: Dave Baugher

with a copy to:

Van Matre, Harris, Volkert & Hollis, P.C.  
1103 E. Broadway  
Columbia, Missouri 65205  
Attn: Craig A. Van Matre, Esq.

**11. Miscellaneous.**

**a. Severability.** If any provision of this Agreement is unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

**b. No Waiver.** Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

**c. Representations and Warranties.** The Company and the City each represent and warrant that (i) this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be, (ii) no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and (iii) this Agreement is valid, binding and enforceable against such party in accordance with its terms.

**d. Assignment.** This Agreement may not be assigned by either party without the written consent of the other.

**12. Limitation of Liability.** Notwithstanding any provision hereof to the contrary, the City and its officials, agents, employees and representatives shall not be liable to the Company for damages or otherwise if this Agreement, any prospective adoption of tax increment financing, the Plan or the Redevelopment 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 Company is prevented from enjoying the rights and privileges contemplated hereunder.

[Remainder of Page Intentionally Left Blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Preliminary Funding Agreement to be duly executed as of the date first above written.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
H. William Watkins, City Manager

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred Boeckmann, City Counselor

**THE TIGER COLUMNS, LLC**

By: \_\_\_\_\_  
Managing Partner

## PRELIMINARY FUNDING AGREEMENT

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### RECITALS

1. The Company desires to develop or redevelop an approximately 0.4 acre site located at the northeast corner of the intersection of 10<sup>th</sup> Street and Locust Street and including the properties commonly known as 116 S. 10<sup>th</sup> Street, 120 S. 10<sup>th</sup> Street, 122 S. 10<sup>th</sup> Street and an adjacent city-owned surface parking lot (the "Proposed Redevelopment Area").

2. The Company has submitted an Application for Tax Increment Financing (the "Application") and application fee of ten thousand dollars (\$10,000) (the "Application Fee") to the City and the City desires to explore the feasibility of financing a portion of the costs of developing or redeveloping the Proposed Redevelopment Area through the use of tax increment financing pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the "Act"), as described in the Application.

3. Subject to the terms of this Agreement, the City desires that the Company advance funds to the City to enable the City to pay certain preliminary start-up costs in connection with the City's consideration of establishing the Proposed Redevelopment Area, which costs (together with the Application Fee) are eligible for reimbursement to the Company in accordance with this Agreement.

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**b.** If the City for any reason fails to approve TIF for the Proposed Redevelopment Area, this Agreement shall be deemed terminated and any unexpended Preliminary Funds shall be refunded to Company as set forth in Paragraph 8 hereof.

**5. Preparation of Redevelopment Plan; Consideration of Tax Increment Financing.** The City agrees, provided that a redevelopment plan meeting the requirements of the Act is submitted by the Company, to (a) to request that the tax increment financing commission conduct a public hearing pursuant to the Act and (b) to the extent within its control, to take all other actions precedent to the consideration by the City Council of the approval of the redevelopment plan and the adoption of tax increment financing; provided, that nothing herein shall obligate the City to approve such redevelopment plan or adopt tax increment financing.

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**If to the City:**

City of City of Columbia  
P.O. Box 6015  
Columbia, Missouri 65205  
Attention: Assistant City Manager

**If to the Company:**

10<sup>th</sup> & Locust, LLC  
400 West Old Plank Road  
Columbia, Missouri 65203  
Attention: Nathan Odle

with a copy to:

Bryan Cave, LLP  
One Kansas City Place  
1200 Main Street, Suite 3500  
Kansas City, Missouri 64105  
Attn: Wesley O. Fields, Esq.

**11. Miscellaneous.**

**a. Severability.** If any provision of this Agreement is unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

**b. No Waiver.** Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

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**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
H. William Watkins, City Manager

ATTEST:

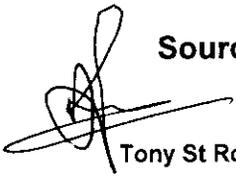
\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred Boeckmann, City Counselor

**10TH & LOCUST, LLC**

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



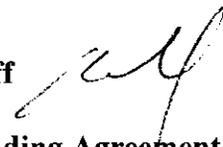
**Source:**

Tony St Romaine

**FISCAL NOTES:**

Agenda Item No. \_\_\_\_\_

**TO: City Council**  
**FROM: City Manager and Staff**  
**DATE: April 14, 2009**  
**RE: TIF – Preliminary Funding Agreement**



<b>City Fiscal Impact</b>	
Enter all that apply:	
\$0	City's current net FY cost.
\$0	Amount of Funds Already appropriated
\$0	Amount of budget amendment needed
\$0	Estimated 2 yr net costs:
\$0	One-time
\$0	Operating / On-going
<b>Program Impact:</b>	
Y	New program/ agency (Y/N)
N	Duplicates/expands an existing program (Y/N)
Y	Fiscal impact on any local political subdivision (Y/N)
<b>Resources Required:</b>	
N	Requires add'l FTE personnel? (Y/N)
N	Requires additional facilities? (Y/N)
N	Requires additional capital equipment? (Y/N)
<b>Mandates:</b>	
N	Federal or state mandated? (Y/N)

**EXECUTIVE SUMMARY:**

Staff has prepared for Council consideration a Resolution to approve a preliminary funding agreement between the City of Columbia and the two applicants for tax increment financing (TIF) whose redevelopment plans are currently under consideration by the City's TIF Commission.

**DISCUSSION:**

The City's TIF Commission is currently evaluating two TIF applications – Tiger Hotel redevelopment, and the 10<sup>th</sup> & Locust mixed use development plan. Passage of this Resolution will recognize the funds that were advanced to the City with each TIF application to be used to pay for preliminary costs in connection with the consideration of each application – predominantly fees to consultants and advisors hired by the City. The agreement also addresses future funds that would be required from the developer should expenses exceed the initial application fee (\$10,000).

**FISCAL IMPACT:**

None. TIF applicants will provide all funds necessary for consideration of their redevelopment plan.

**SUGGESTED COUNCIL ACTIONS:**

Approval of the Resolution