CITY OF
LAKELAND
TENNESSEE

Industrial Development Board
Special Meeting Agenda
Tuesday, November 1, 2022, 5:30 PM
City Hall, Lakeland, Tennessee 38002

I. CALL TO ORDER:

II. ROLL CALL:

III. APPROVAL OF MINUTES OF PREVIOUS MEETING:

1. October 27, 2022

IV. PUBLIC DISCUSSION:

V. REPORTS OF OFFICERS AND COMMITTEES:

VI. OLD BUSINESS:

VII. NEW BUSINESS:

1. Discussion and possible action on TIF Loan Agreement with FirstBank for Lakeland Commons.

VIII. ANNOUNCEMENTS:

IX. ADJOURNMENT:

INDUSTRIAL DEVELOPMENT BOARD
MEETING MINUTES
THURSDAY, OCTOBER 27, 2022, 5:30 PM
CITY HALL, LAKELAND, TN.

I. CALL TO ORDER: The meeting was called to order by Chairman Jeremy Burnett at 5:33 p.m.

II. ROLL CALL BY RECORDER:

Keith Acton	Present
Shaun Brannen	Absent (excused)
Angie Grooms	Present
Adam Henry	Absent (excused)
Alan Johnson	Present
Joseph Laster	Present
(C) Jeremy Burnett	Present

Others present:
Paul Luker, Planning Director
Al Bright Jr, Attorney *(IDB Counselor)*

For the record: Present in the audience were the following:
Commissioner Richard Gonzales and Commissioner Wesley Wright

III. APPROVAL OF MINUTES OF PREVIOUS MEETING:
Mr. Laster moved to approve the previous meeting minutes of September 22, 2022, as written, seconded by Mrs. Grooms.

Motion passed unanimously, voice vote, 5 in favor 0 against.

IV. PUBLIC DISCUSSION: *None*

V. REPORTS OF OFFICERS AND COMMITTEES: N/A

VI. OLD BUSINESS:

1. **Election of the Vice-Chair of the Lakeland IDB.**
   Mr. Acton moved to bring this item to the floor, seconded by Mrs. Grooms.

   Mr. Acton nominated Mr. Adam Henry for Vice-Chair.

   With no other nominations being offered, Mr. Acton moved to close the floor, seconded by Mrs. Grooms.

   When the question was called the nomination passed unanimously, voice vote, 5 in favor 0 against.

VII. NEW BUSINESS:

1. **Resolution – approving a draw request in connection with the tax increment financing for Lakeland Commons, LP.**
   Mr. Laster moved to bring this item to the floor, seconded by Mrs. Grooms.

   Comments were heard by the following:
   Al Bright, Jr. – Attorney *(IDB Counselor*)

   Discussion ensued.

   After the discussion, Mr. Johnson moved to approve the resolution as presented, seconded by Mr. Laster. Motion passed unanimously, voice vote, 5 in favor 0 against. *(See Resolution R-115-2022 on file)*

VIII. ANNOUNCEMENTS:

IX. ADJOURNMENT:

There being no other business to consider Mr. Laster moved to adjourn the meeting, seconded by Mrs. Grooms.

Motion passed unanimously, voice vote, 5 in favor 0 against.

The meeting was adjourned at 5:43 p.m. on Thursday, October 27, 2022.

____
Alan Johnson*, Secretary*

ATTEST:

____
Debra Murrell, *City Recorder*

These minutes were approved Tuesday, November 01, 2022, and constitute an official public record of the City of Lakeland, duly recorded, and filed in the Minute Book of the City of Lakeland.

RESOLUTION R-123-2022

OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE, APPROVING A DEVELOPMENT AND FINANCING AGREEMENT WITH LAKELAND COMMONS, LP

WHEREAS, on November 12, 2018, The Industrial Development Board of the City of Lakeland, Tennessee (the "Lakeland IDB") approved an economic impact plan (the "Economic Impact Plan") regarding the development of an area located at 9768 Highway 70, Lakeland, Tennessee 38002 (inclusive of Tax Parcel ID Nos. L0150 00332 and L0150 00479C) which is approximately 40 acre mixed use development at the southwest corner of U.S. Highway 70 and Seed Tick Road in Lakeland, Shelby County, Tennessee (the "Plan Area"); and,

WHEREAS, on November 12, 2018, the Lakeland IDB approved a Tax Increment Financing Application (the "TIF Application") for the Plan Area, as submitted by Lakeland Commons, LP, a Tennessee limited partnership ("Lakeland Commons"); and,

WHEREAS, the development of the Plan Area is expected to create a mixed use development that is expected to include a three-story building with restaurants, professional office space, boutique retail space and a site for the relocation of Lakeland City Hall, as more particularly described in the Economic Impact Plan (collectively, the "Project"); and,

WHEREAS, the Economic Impact Plan would permit certain tax increment financing ("Tax Increment Financing") pursuant to Chapter 53, Title 7 of the Tennessee Code Annotated; and,

WHEREAS, in connection with Tax Increment Financing, the Lakeland IDB and Lakeland Commons have previously entered into that certain Development and Financing Agreement dated December 27, 2018, as amended by that certain First Amendment to Development and Financing Agreement dated June 21, 2021 (the "Existing Development Agreement"); and,

WHEREAS, to finance the costs of the Project, the Lakeland IDB has previously obtained a loan from Simmons Bank, an Arkansas banking association ("Simmons Bank"), as evidence by that certain Loan Agreement dated January 25, 2019, between the Board and Simmons Bank and the promissory note described therein, including any amendments, changes and/or modifications thereto (collectively, the "Existing TIF Loan"); and,

WHEREAS, in order to refinance the Existing TIF Loan and for additional costs of the Project, FirstBank, a Tennessee banking corporation with offices in Memphis, Tennessee (the "Lender"), has agreed to extend a loan to the Lakeland IDB in the principal amount not to exceed $9,750,000.00 (the "TIF Loan"); and,

WHEREAS, in connection with the TIF Loan, the Lakeland IDB and Lakeland Commons desire to enter into the Amended and Restated Development and Financing Agreement (the "Amended and Restated Development Agreement"), including the attachments thereo (collectively, the "Amended and Restated Development Agreement"), a copy of which is attached hereto as **Exhibit A**; and,

RESOLUTION R-123-2022

OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE, APPROVING A DEVELOPMENT AND FINANCING AGREEMENT WITH LAKELAND COMMONS, LP

WHEREAS, under the Amended and Restated Development Agreement, the proceeds of the Tax Increment Financing would be used to pay the costs of certain eligible public improvements (the "TIF Eligible Costs") related to the development of the Project and would pledge the TIF Revenues to apply to the debt service of the Tax Increment Financing; and,

WHEREAS, the Tax Increment Financing shall not represent or constitute a debt or pledge of the faith and credit or the taxing power of the City of Lakeland, Tennessee or Shelby County Tennessee for approval with Tennessee Code Annotated 7-53-312:

NOW, THEREFORE, BE IT RESOLVED by the Lakeland IDB that:

RESOLVED, that the form of the Amended and Restated Development Agreement is hereby approved by the Lakeland IDB and further,

RESOLVED, the officers and directors of the Lakeland IDB are hereby authorized to execute the Amended and Restated Development Agreement with Lakeland Commons in substantially the form presented at this meeting or with such changes therein as shall be approved by the officer executing the same and further,

RESOLVED, that the directors, officers, agents and employees of the Lakeland IDB are hereby authorized and directed to do all such acts and things and to execute or accept any and all such certificates or documents as may be necessary to carry out and comply with provisions of this Resolution and the Loan Documents and to carry out, give effect to and consummate the transactions contemplated hereby and thereby. All of the acts and doings of the directors, officers, agents and employees of the Lakeland IDB which are in conformity with the intent and purposes of this Resolution and the Loan Documents, whether heretofore or hereafter taken or done, shall be and are hereby ratified, confirmed and approved.

APPROVED AND ADOPTED by the Industrial Development Board of the City of Lakeland, Tennessee, this 1st day of November, 2022.

____

Jeremy Burnett, *Chairman*

ATTEST:

____

Alan Johnson, *Secretary*

RESOLUTION R-123-2022

OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE, APPROVING A DEVELOPMENT AND FINANCING AGREEMENT WITH LAKELAND COMMONS, LP

EXHIBIT A

Amended and Restated Development Agreement

See Attached

AMENDED AND RESTATED DEVELOPMENT AND FINANCING AGREEMENT
BETWEEN
THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE
AND
LAKELAND COMMONS, LLC

THIS AMENDED AND RESTATED DEVELOPMENT AND FINANCING AGREEMENT (herein the "Agreement") is made and entered into as of the ____ day of November, 2022, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et. seq. (the "Board"), and LAKELAND COMMONS, LLC, a Delaware limited liability company, successor by conversion to LAKELAND COMMONS, LP, a Tennessee limited partnership ("Lakeland Commons").

W I T N E S S E T H:

WHEREAS, the Board has prepared and approved an economic impact plan (the "Economic Impact Plan") regarding the development of an area located at located at the southwest corner of Highway 70 and Seed Tick Road and municipally known as 9768 Highway 70, in the City of Lakeland, Tennessee (the "City") and Shelby County, Tennessee (the "County"), as described in the Economic Impact Plan (the "Plan Area"); and

WHEREAS, a copy of the Economic Impact Plan is attached hereto as Exhibit A; and

WHEREAS, Lakeland Commons, an Affiliate thereof, or any other permitted assignee thereof (including, without limitation, any successor by merger or conversion) (collectively, "Developer") will continue to develop the Plan Area pursuant to a planned development that was approved by the City for a new mixed-use community of office, retail, and other uses as permitted by such planned development, as such planned development may be amended from time to time by the City (the "Project"); and

WHEREAS, the Economic Impact Plan permits certain tax increment financing ("Tax Increment Financing") to be provided through the issuance of the Board's bonds, notes, or other obligations as more particularly set forth in the Economic Impact Plan; and

WHEREAS, in connection with the Tax Increment Financing, the Board and Lakeland Commons have previously entered into that certain Development and Financing Agreement dated December 27, 2018, as amended by that certain First Amendment to Development and Financing Agreement dated June 21, 2021 (the "Existing Development Agreement"); and

WHEREAS, to finance the costs of the Project, the Board has previously obtained a loan from Simmons Bank, an Arkansas banking association ("Simmons Bank"), as evidence by that certain Loan Agreement dated January 25, 2019, between the Board and Simmons Bank and the promissory note described therein (the "Existing TIF Loan"); and

WHEREAS, in order to refinance the Existing TIF Loan and for additional costs of the Project, FirstBank, a Tennessee banking corporation with offices in Memphis, Tennessee (the "Lender"), has agreed to extend a loan to the Board in the principal amount not to exceed $9,750,000.00 (the "TIF Loan"), evidenced by a note to be issued by the Board substantially in the form as attached hereto as Exhibit B (the "TIF Note"), with such TIF Note being issued pursuant to the terms of a Loan Agreement to be executed by Lender and the Board in substantially the same form as attached hereto as Exhibit C (the "Loan Agreement"); and

WHEREAS, the "TIF Revenues", as defined in the Economic Impact Plan, are being allocated to the Board to be used to pay debt service of the Tax Increment Financing and to pay for certain "Eligible Costs", as defined in the Economic Impact Plan, incurred in connection with Project; and

WHEREAS, under Tenn. Code Ann. §§ 7-53-301, et seq., and the Economic Impact Plan, the Board is authorized to issue and secure the TIF Note to finance Eligible Costs; and

WHEREAS, the parties desire to amend and restate the Existing Development Agreement to reflect the TIF Loan and to set forth the rights and obligations of the parties with respect to the development of the Plan Area and the financing thereof under the TIF Loan, all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

1. The TIF Loan. As soon as practicable after the execution of this Agreement, the Board and the Lender will close the TIF Loan by executing, delivering, and accepting (as applicable) the following documents in substantially the same forms as attached to this Agreement, with such changes as the parties may approve, such approval to be conclusively evidenced by the parties execution and delivery thereof (collectively, the "Loan Documents"):

(a) the Loan Agreement;

(b) the TIF Note;

(c) Assignment of Tax Increment Revenues, dated as of the date hereof, by and between the Board and the Lender in substantially the same the form as attached hereto as Exhibit D (the "TIF Assignment") assigning the TIF Revenues;

(d) Collateral Assignment of Development and Financing Agreement, dated as of the date hereof, by and between the Board and the Lender in substantially the same form as attached hereto as Exhibit E (the "Collateral Assignment");

(e) One or more guaranty agreements from the Developer, Vincent D. Smith, Jr., David Andrews, and Bart Thomas (collectively, the "Guarantors") to the Lender in the form approved by the Lender (individually, a "Guaranty" and collectively, the "Guaranties"); and

(f) One or more ISDA Master Agreements and related documents to effect an interest rate swap with respect to the TIF Loan.

The Developer consents to the disbursement of the proceeds of the TIF Loan in accordance with the Loan Documents and this Agreement. The Board agrees to comply with the terms of the Loan Documents to which it is a party. The Board also agrees that it will not agree or consent to any amendment, modification or change in the Loan Documents without the prior written consent of the Developer.

At the request of the Developer, the Board will provide commercially reasonable cooperation to the Developer (at no out-of-pocket cost to the Board) in closing any refinancing, renewal, or replacement of the TIF Loan (a "Refinancing"). In connection with a Refinancing, the Board agrees to execute such additional loan documents as may be required any lender providing a Refinancing so long as such additional loan documents are non-recourse to the Board to the same extent as the Loan Documents. At the request of either the Developer or the Board, the parties shall enter into any addendum to (or amended and restated version of) this Agreement reasonably requested by either party to further evidence and memorialize the parties' rights and obligations with respect to any Refinancing.

2. Use of Proceeds of TIF Loan. The Board hereby agrees to commit the proceeds of the TIF Loan to (i) repayment of the Existing TIF Loan, (ii) the payment of Eligible Costs in accordance with the terms of the Loan Agreement and this Agreement, and (iii) following repayment of the TIF Loan, any other Eligible Costs.

3. Disbursement of TIF Revenues. The Board hereby agrees to commit the TIF Revenues to the payment of the TIF Loan pursuant to the Loan Agreement in accordance with the terms of the Loan Agreement and this Agreement.

4. Developer Obligations. The Developer has undertaken or agrees to undertake the following development activities in connection with the Project:

(a) Prepare and submit to the City plans and specifications for the improvements listed on the attached Exhibit F (the "Planned Improvements").

(c) Make no material alterations to the plans and specifications for the Planned Improvements without the prior consent of the City and the Lender.

(d) Diligently pursue and complete the construction of the Planned Improvements in accordance with the plans and specifications approved by the City so that the Improvements shall be complete on or before the completion deadline set forth in the Loan Agreement.

(e) In the event the Eligible Costs exceed the proceeds of the TIF Loan, the Developer shall pay all such excess costs. The Developer agrees that the Board shall have no obligation to undertake any activities which would cause the Board to incur costs or expenses in excess of the proceeds of the TIF Loan available therefor.

5. Obligations of the Developer with Respect to the TIF Loan. The Developer agrees to the following obligations with respect to the TIF Loan:

(a) The Developer shall pay on behalf of the Board, directly to the Lender, in connection with the annual payments of debt service on the TIF Note as specified therein (irrespective of the limitation in the TIF Note that such payments are limited to TIF Revenues) through and including the maturity of the TIF Note, an amount equal to the difference, if any, between the amount of interest and principal then due with respect to the TIF Note and the TIF Revenues then available therefor, if any.

(b) In the event the Developer is required to make any payment pursuant to subsection (a) of this Section 5, the Developer shall be deemed to have made a loan to the Board on a non-recourse basis to enable the Board to meet its obligations with respect to the TIF Loan. Any such loan shall bear interest at the rate then charged under the TIF Loan and shall have a maturity date as the maturity date of the TIF Note. Any such loans from the Developer to the Board pursuant to this subsection shall be paid solely from the TIF Revenues, provided, however, that no portion of any such loan from the Developer to the Board shall be repaid, and no interest thereon or other amounts due with respect thereto shall be paid, so long as any amounts are past due to the Lender under the TIF Note, the TIF Loan or otherwise with respect to the TIF Note or the TIF Loan. The repayment of any loans from the Developer by the Board is expressly junior and subordinate in all respects to the full and complete payment to the Lender of any amounts then due and payable under the TIF Note, the TIF Loan and any other amounts otherwise due and payable with respect to the TIF Note or the TIF Loan. The Developer shall give the Board written notice of any loans made by the Developer pursuant to this Section 5 within thirty (30) days of such loan, and the Board shall, based upon such notices, keep a record of all amounts due to the Developer hereunder. The Board shall not be required to repay any amounts loaned by the Developer hereunder of which the Board has not received notice pursuant to this Section.

(c) The TIF Note and any interest accruing thereon and any loan from the Developer described above are to be repaid solely out of the TIF Revenues except as to the TIF Note, such TIF Note shall be additionally payable from amounts payable hereunder or under any Guaranties.

(d) Notwithstanding the subsequent sale of all or any portion of the property on which the Project is to be located, absent an express and explicit release agreement in favor of the Developer and/or Guarantors executed and delivered by the Lender (which release shall be binding upon the Lender and the Board), the Developer and Guarantors shall remain fully liable for their respective obligations under the Loan Documents, notwithstanding the assumption of any or all obligations by any buyer of such property.

(g) On or prior to October 1st of each year, commencing October 1, 2023, the Developer shall provide to the Lender and the Board a list of all properties located in the Plan Area and the status of the payment of the property taxes with respect to each such property.

(h) The parties acknowledge that the Project necessitates the installation of a traffic signal at the intersection of Seed Tick Road and U.S. Highway 70. The parties agree that the City will manage the installation of the traffic signal (collectively, the "Traffic Signal Improvements") and the Developer will pay for the same in the amount not to exceed the traffic signal estimate as set forth in the Economic Impact Plan (i.e. $300,000.00).

i. Prior to the construction of any Traffic Signal Improvements, the parties agree to follow all applicable Tennessee Department of Transportation ("TDOT") requirements necessary to design and install the traffic signal.

ii. Developer shall use commercially reasonable efforts to obtain, within the next six (6) months, additional financing secured by the Tax Increment Revenues to pay for the actual construction and design costs for the Traffic Signal Improvements, including costs for right-of-way acquisition and relocation of utilities (the "Traffic Signal Financing"). Such Traffic Signal Financing may be in the form of an increase in the amount of the TIF Loan, a Refinancing of the TIF Loan, or a supplemental loan from another lender (subject to the approval of Lender).

iii. Developer agrees to pay for the design costs of the Traffic Signal Improvements in an amount not to exceed $300,000.00, which may be reimbursed from subsequent TIF Revenues in accordance with the terms of this Agreement. Any design costs in excess of $300,000.00 may be paid from the proceeds of the Traffic Signal Financing, but Developer shall have no personal liability for such excess costs.

iv. For purposes of clarity, Developer's sole obligations with respect to the Traffic Signal Improvements are (i) to use commercially reasonable efforts to obtain the Traffic Signal Financing as set forth above and (ii) to pay for costs for the Traffic Signal Improvements in a total amount not to exceed $300,000.00, and neither Developer nor any Guarantor shall have any personal liability with respect to the Traffic Signal Improvements other than any guaranty required by the lender providing the Traffic Signal Financing. In connection with the Traffic Signal Financing, the Board agrees to execute such additional loan documents as may be required by any lender providing the Traffic Signal Financing so long as such additional loan documents are non-recourse to the Board to the same extent as the Loan Documents. At the request of either the Developer or the Board, the parties shall enter into any addendum to (or amended and restated version of) this Agreement reasonably requested by either party to further evidence and memorialize the parties' rights and obligations with respect to the Traffic Signal Financing.

6. Disbursement of Loan Proceeds. All proceeds of the TIF Loan shall be disbursed by the Lender in accordance with the provisions of Article VI of the Loan Agreement and such other terms as may be agreed upon by the Lender and the Developer.

7. Future Pledges. The Board covenants and agrees not to pledge the TIF Revenues to the payment of any indebtedness other than the TIF Note (or any Refinancings thereof) or to apply the TIF Revenues for any purpose other than the payment of the Eligible Costs in each case without the prior written consent of Lender and Developer.

8. Local Business Participation.

(a) The Developer agrees to utilize Local Business Participants (defined below) in connection with the Project in accordance with this Section 8.a. (the "LBP Obligation), and the Developer shall document its contracts with Local Business Participants. The LBP Obligation for this Project is twenty-eight percent (28%) of TIF Spending, defined below. For purposes hereof, "TIF Spending" means the Developer's direct cost of constructing Planned Improvements using the Tax Increment Financing. "Local Business Participant" or "LBP" means any business that is certified as a Minority/Woman Business Enterprise by either the City or County government or their successor programs; provided that the City and/or County maintain up-to-date lists of such Minority/Woman Business Enterprises. A vendor shall be recognized as a LBP if included in lists maintained by the City or County government for that purpose during the year in which the vendor contract is entered into with or the purchase is made by the Developer. If the City and County fail to maintain up-to-date lists of such Minority/Woman Business Enterprises, a recognized Local

Business Participant shall mean other Minority/Woman Business Enterprises certified by other entities jointly determined by the Developer and the Board in their reasonable discretion

(b) Notwithstanding the foregoing, this Agreement and the LBP Obligation shall not apply to any Planned Improvement to the extent that construction is completed by a Public Entity (defined below) (i.e., the LBP Obligation applies only to work performed directly by Developer or its affiliates or contractors).

(c) Starting at the commencement of the Project and continuing annually until the repayment in full of the TIF Loan, the Developer shall submit a report to the Board certified as true and correct in all material respects by the Developer regarding compliance with this Section 7 within ninety (90) days after the close of such period. Such report shall describe the compliance that Developer has made regarding the LBP Obligations for the preceding year. Each such Report Form shall be signed by an authorized officer or director.

(d) Expenditures made in furtherance of the purposes of the LBP Obligation shall appear on the books and records of the Developer. The Developer shall keep reasonable supporting documentation to substantiate such expenditures. The Developer shall make such books and records regarding compliance with this Agreement available to the Board at reasonable times, upon reasonable prior notice, as requested by the Board or its agents. The Developer shall keep copies of all books and records regarding compliance with this Agreement and all reports to the Board regarding compliance with this Agreement for at least four (4) years after the end of the year to which such books, records and reports relate. The Board is hereby authorized to conduct an audit of the Developer's books and records regarding compliance with this Agreement, and the Developer shall cooperate fully with any such audit authorized or conducted by the Board. The Developer further agree that the Board and any of its duly authorized agents shall have the right at all reasonable times upon reasonable notice to the Developer to examine and inspect the Project to determine that the Developer, and any of its applicable subsidiaries and affiliates are in compliance with the terms and conditions of this Agreement; provided that any such inspection will be conducted in a manner that will minimize any intrusion on the operations of the Project.

9. Other Tax Increment Financing. The Board represents, warrants and certifies to the Developer that the Board currently does not have outstanding any bonds, notes or other obligations payable from or secured by TIF Revenues derived from the Plan Area other than the TIF Note and the Existing TIF Loan, which will be paid in full with the proceeds of the TIF Note.

10. Maintenance of Special Fund. The Board covenants and agrees to establish and, as long as the indebtedness evidenced by the TIF Note remains outstanding and unpaid or this Agreement otherwise remains in effect, maintain a separate and special fund of the Board with the Lender to be known as the Lakeland Town Center Tax Increment Fund, as more fully described in Article VII of the Loan Agreement (the "Tax Increment Fund"), to be kept separate and apart from all other funds of the Board, pursuant to the requirements of Tenn. Code Ann. § 7-53-312, into which will be deposited all TIF Revenues. The fund shall consist of a separate account into which all TIF Revenues shall be deposited as received and from which all disbursements will be made. The Developer shall pay all costs and expenses of establishing and maintaining such account.

11. Assignment. With the exception of a pledge of all or any portion of the Developer's rights as collateral for any loan in connection with the Project, Developer may not assign or transfer this Agreement or any interest of the Developer hereunder without the consent of the Lender and the Board, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Developer may assign or transfer this Agreement in whole or in part to one or more Affiliate(s) of

Developer (including, without limitation, any successor to Developer by merger or conversion), without obtaining the prior written consent of the Board, but with prior written notice to the Board. Any such assignment shall not relieve Developer of Developer's liability for the performance of its duties and obligations hereunder unless the Lender and the Board consents in writing to such release. Except for the Board's assignment of this Agreement to the Lender pursuant to the Collateral Assignment, the Board may not assign or transfer this Agreement or any interest of the Board hereunder without the consent of the Developer. "Affiliate" shall mean as to Developer, a person or entity that directly or indirectly controls, is controlled by, or is under common control with Developer.

12. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties.

13. Waiver of Consequential Damages. In no event shall the parties have the right to recover any consequential, exemplary, incidental or punitive damages as a result of any breach or default under this Agreement.

14. Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the Business Day following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

If to the Developer to:

Lakeland Commons, LLC
c/o Vincent Smith, Jr.
355 Tara Lane
Memphis, Tennessee 38111

If to the Lender to:

FirstBank
6815 Poplar Ave., Ste. 100
Memphis, Tennessee 38138

If to the Board to:

The Industrial Development Board of the
City of Lakeland, Tennessee
c/o Chairman
10001 Highway 70
Lakeland, Tennessee 38002

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices. No such notice, demand, tender or other communication under this Agreement shall be valid unless the Lender receives a copy thereof as provided above.

15. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in Shelby County, Tennessee.

16. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Board and the Developer with respect to the TIF Loan. This Agreement contains the sole and entire understanding between the Board and the Developer with respect to the transactions contemplated by this Agreement, and all promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties.

17. Amendment. This Agreement shall not be modified or amended in any respect except by written agreement executed by or on behalf of the parties to this Agreement in the same manner as this Agreement is executed; provided, however, that no modification or amendment of this Agreement shall be effective unless the Lender shall have provided its prior written consent to such modification or amendment.

18. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.

20. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

21. Definitions. All capitalized terms not otherwise defined herein have the respective meanings set forth in the Loan Agreement.

22. Expenses. The Developer shall pay promptly all costs of closing and administering the TIF Loan and all expenses of the Lender and the Board with respect thereto, including, without limitation, fees of the Board and the Lender, fees for consultants and attorneys of the Lender and the Board incurred in connection with the closing of the TIF Loan and the Loan Documents on or about the date hereof and legal fees incurred by the Lender and the Board subsequent to the closing of the TIF Loan in connection with the administration and enforcement of this Agreement, the TIF Loan or any modification of the terms of the Loan Documents.

23. Reliance By the Lender; Consents and Agreements of the Board. The Board and the Developer acknowledge and agree that the Lender may rely on all of the representations, warranties and covenants set forth in this Agreement, that the Lender is an intended third-party beneficiary of such representations, warranties and covenants and that the Lender shall have all rights and remedies available at law or in equity as a result of a breach of such representations, warranties and covenants, including to the extent applicable, the right of subrogation. Notwithstanding any other terms of this Agreement, the Board shall not, without the prior written consent of the Lender, while the Lender is the holder of the TIF Note, consent or agree to any modification of, or grant any consent or approval under, this Agreement, or waive compliance with any of the terms hereof. While the Lender is the holder of the TIF Note, any attempt by the Board to grant any such consent, approval or waiver without the prior written consent of the Lender shall be void and of no force and effect.

24. Term. Unless terminated earlier as provided herein, this Agreement shall be effective as of the date hereof and shall remain in effect until ten (10) years from the date of the expiration of the final Allocation Period (as defined in the Loan Agreement) or until terminated by mutual agreement of the parties and the Lender or their successors and assigns. The expiration date of this Agreement may be extended by written mutual consent of the parties hereto.

25. No Government Limitation. This Agreement between the Developer and the Board shall not be construed to bind any other agency or instrumentality of federal, state or local government in the enforcement of any regulation, code or law under its jurisdiction.

26. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

27. Business Days. For purposes of this Agreement, "Business Day" shall have the same meaning herein as in the Loan Agreement. If any date on which performance or notice is due under this Agreement is not a Business Day, performance or notice shall not be due until the next Business Day.

28. Amendment and Restatement. This Agreement amends, restates, and supersedes in its entirety the Existing Development Agreement.

Signatures follow.

IN WITNESS WHEREOF, the Board and the Developer have caused this Agreement to be duly executed as of the date first above written.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF LAKELAND, TENNESSEE

By:_______________________________________
Name: ____________________________________
Title: _____________________________________

ATTEST:

____
Secretary

LAKELAND COMMONS, LLC

By:_______________________________________
Name: ____________________________________
Title: _____________________________________

EXHIBIT A

Economic Impact Plan

See attached.

<u>**EXHIBIT B**</u>

TIF Note

See attached.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF LAKELAND, TENNESSEE
TAX INCREMENT REVENUE NOTE
(Lakeland Town Center)

$9,750,000.00 **____________________ ___, 2022**

FOR VALUE RECEIVED, **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53 101, et. seq. (the "Board") promises and agrees to pay to the order of **FIRSTBANK**, a Tennessee banking corporation with offices in Memphis, Tennessee (the "Lender"), or at such other place as may be designated in writing by the holder, in lawful money of the United States of America, the principal sum of NINE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($9,7500,000.00), or such lesser amount as is advanced hereunder pursuant to the Loan Agreement, as hereinafter defined, together with interest from the date hereof on the unpaid principal balance outstanding from time to time, at such rate(s) as are set forth below. Interest shall be computed based upon a year of 360 days and based upon the actual number of days elapsed. This Note is issued pursuant to that certain Loan Agreement, dated as of the date hereof (as it may be amended, modified, extended, or renewed from time to time, the "Loan Agreement"), by and between the Lender and the Board. Any capitalized term used in this Note that is not otherwise defined herein shall have the meaning given to it in the Loan Agreement.

Amounts disbursed under this Note commencing on the date hereof shall bear interest in accordance with and at a rate as set out in the Loan Agreement. Payments of principal and interest shall be made in accordance with the terms of the Loan Agreement.

The Board may prepay all or any portion of the outstanding balance under this Note at any time without penalty or premium.

The proceeds hereunder shall be disbursed in accordance with Article VI of the Loan Agreement.

This Note shall mature on ______________ (the "Maturity Date"), unless earlier called pursuant to the terms of the Loan Agreement, including, without limitation, the right of Lender to require prepayment pursuant to Section 4.1 of the Loan Agreement.

Principal and interest are due and payable under this Note in accordance with the Loan Agreement.

All payments hereunder shall be applied in accordance with the terms and provisions of the Loan Agreement.

To the extent permitted by law, the undersigned shall pay to the holder hereof a late charge of the lesser of (i) five percent (5%) of any payment hereunder which is not received by the holder hereof within ten (10) days of when said payment is due hereunder or (ii) any lesser maximum amount permitted under applicable law. No late charge, however, shall be imposed on any payment made on time and in full solely by reason of any previously accrued and unpaid late charge. The parties agree that said late charge represents a reasonable sum considering all of the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that Lender will incur by reason of the late payment. The parties further agree that proof of actual damages would be difficult. Acceptance of any late charge shall not constitute a waiver of any default with respect to any overdue payment and shall not prevent the holder hereof from exercising any other rights and remedies available to the holder hereof.

Notwithstanding any provision herein to the contrary, it is the intent of the Lender, the Board and all parties liable on this Note that neither the Lender nor any subsequent holder shall be entitled to receive, collect, reserve or apply, as interest or other charges, any amounts in excess of the maximum lawful rate of interest. In the event this Note requires a payment of interest or other charges that exceeds the maximum lawful rate of interest, such interest or other charges, as the case may be, shall not be received, collected, charged or reserved until such time as such interest or other charges, as the case may be, together with all other interest and other charges then payable, fall within the maximum lawful rate of interest. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the amount provided by application of the maximum lawful rate of interest, the Board and the Lender, to the greatest extent permitted under applicable law, (a) shall exclude voluntary prepayments and the effects thereof, and (b) shall amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire term hereof; provided, however, that if the principal indebtedness evidenced hereby is paid in full prior to the end of the full contemplated term of this Note, and if the interest received for the actual period of existence hereof exceeds the amount provided by application of the maximum lawful rate of interest, the holder shall refund to the Board the amount of such excess or credit the amount of such excess against the principal portion of the principal indebtedness hereunder as of the date it was received, and, in such event, the Lender shall not be subject to any penalties provided by any laws for contracting for, charging, reserving, collecting or receiving interest in excess of the amount provided by application of the maximum lawful rate of interest.

Principal and unpaid interest shall bear interest following any default in payment of principal of or interest on this Note and the expiration of the cure period provided in the Loan Agreement at the maximum lawful rate of interest until paid. In case of suit, or if this obligation is placed in an attorney's hands for collection, or to protect the security for its payment, the Board will pay, but only from any Tax Increment Revenues that may be available to it to the holder hereof, all costs of collection and litigation, including reasonable attorneys' fees, incurred by the holder hereof.

This Note and all obligations relating hereto or hereunder shall not be general obligations of the Board and shall in any event be payable only from any Tax Increment Revenues. Nothing contained in this paragraph shall (x) be deemed to be a release or impairment of the indebtedness evidenced by this Note or the lien of the Loan Agreement or any Collateral Documents, or (y) preclude the Lender from (1) realizing on the collateral described in the Collateral Documents, or (2) enforcing any other rights of the Lender against third parties other than the Board, including any remedies the Lender may have under the Loan Agreement or the Collateral Documents.

The makers, endorsers, guarantors and all parties to this Note and all who may become liable for the same, jointly and severally waive presentment for payment, protest, notice of protest, notice of nonpayment of this Note, demand and all legal diligence in enforcing collection, and hereby expressly agree that the lawful owner or holder of this Note may defer or postpone collection of the whole or any part hereof, either principal and/or interest, or may extend or renew the whole or any part hereof, either principal and/or interest, or may accept additional collateral or security for the payment of this Note, or may release the whole or any part of any collateral security and/or liens given to secure the payment of this Note, or may release from liability on account of this Note any one or more of the makers, endorsers, and/or other parties hereto, all without notice to them or any of them; and such deferment, postponement, renewal, extension, acceptance of additional collateral or security and/or release shall not in any way affect or change the obligation of any such maker, endorser, guarantor or other party to this Note, or of any who may become liable for the payment hereof.

The term "maximum lawful rate of interest" as used herein shall mean a rate of interest equal to the higher or greater of the following: (a) the "applicable formula rate" defined in Tenn. Code Ann. § 47-14-

102(3), or (b) such other rate of interest as may be legally charged under other applicable laws or regulations.

This Note is secured by an Assignment of Tax Increment Revenues from the Board to the holder hereof. It is the intent of the parties that all Tax Increment Revenues shall be made available for and applied to debt service on this Note, and to no other purpose or use until the indebtedness evidenced by this Note has been paid in full.

The validity, interpretation, enforcement and effect of this Note shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

This Note may not be changed or terminated without the prior written approval of the holder hereof and the Board. No waiver of any term or provision hereof shall be valid unless in writing signed by the holder.

Executed as of the ___ day of ____________, 2022.

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE

By:____
Chairman

ATTEST:

____
Secretary

<u>EXHIBIT C</u>

Loan Agreement

See attached.

FIRSTBANK

and

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE

LOAN AGREEMENT

RELATING TO LAKELAND TOWN CENTER

Dated as of _____________ __, 2022

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LOAN AGREEMENT

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LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Loan Agreement") is made and entered into as of _____________ ___, 2022, between **FIRSTBANK**, a Tennessee banking corporation with offices in Memphis, Tennessee (the "Lender"), and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et. seq. (the "Board"). **LAKELAND COMMONS, LLC**, a Delaware limited liability company, successor by conversion to **LAKELAND COMMONS, LP**, a Tennessee limited partnership ("Lakeland Commons"), joins in this Loan Agreement for the limited purpose set forth in Section 2.6(b) below.

RECITALS:

A. The Board has prepared and approved an Economic Impact Plan (the "Economic Impact Plan") regarding the development of an area located at located at the southwest corner of Highway 70 and Seed Tick Road and municipally known as 9768 Highway 70, in the City of Lakeland (the "City") and Shelby County, Tennessee (the "County") as described in the Economic Impact Plan (the "Plan Area") by resolution of the Board on November 12, 2018 (the "IDB Resolution"). A copy of the Economic Impact Plan is attached to the Development Agreement (defined below) as Exhibit A.

B. The Board and Lakeland Commons have previously entered into a Development and Financing Agreement dated December 27, 2018, as amended by that certain First Amendment to Development and Financing Agreement dated June 21, 2021 (the "Prior Development Agreement"), regarding the development of the Plan Area.

C. The Economic Impact Plan, including certain tax increment financing provisions contained therein, was approved by the Board of County Commissioners of Shelby County, on November 19, 2018, on behalf of the County (the "County Resolution") and by the Board of County Commissioners of the City of Lakeland on November 12, 2018, on behalf of the City (the "City Resolution").

D. Board previously entered into that TIF loan transaction with Simmons Bank in the original principal amount of $5,500,000.00 as amended and increased to $9,750,000.00 (the "Simmons Loan") which is currently secured by certain Board assets.

E. The Board and Lakeland Commons have entered into an Amended and Restated Development and Financing Agreement dated _______________, 2022 (the "Development Agreement"), which amended, restated, and replaced the Prior Development Agreement.

F. Under Tenn. Code Ann. §§ 7-53-101, et seq. (the "Act"), and the Economic Impact Plan, the Board is authorized to issue and secure the TIF Note (as herein defined) to finance the Eligible Costs (as herein defined).

G. The Board has established a special fund (the "Tax Increment Fund") into which Tax Increment Revenues (as herein defined) will be deposited, and from which debt service on the TIF Note will be paid in accordance with Tenn. Code Ann. § 7-53-312.

H. Board and Lakeland Commons now desire to refinance the Simmons Loan with a new loan from Lender.

TERMS:

NOW, THEREFORE, in consideration of the Recitals above, the premises and the mutual covenants and undertakings below, the parties hereto covenant, agree and bind themselves as follows:

ARTICLE I
DEFINITIONS

The following words and phrases shall have the following meanings:

"Affiliate" means as to Developer, a person or entity that directly or indirectly controls, is controlled by, or is under common control with Developer.

"Allocation Period" means, with respect to each tax parcel within the Plan Area, the twenty-year period of time during which the Tax Increment Revenues from such tax parcel will be allocated to the Board pursuant to the Economic Impact Plan.

"Annual Principal Payments" has the meaning set forth in Section 2.6(a) below.

"Annual Principal Payment Date" means the first (1st) day of each January commencing with January 1, 2024, and each January 1 of each year thereafter until the Maturity Date.

"Applicable Rate" means, for any day, Term SOFR (or, if applicable, the Benchmark Replacement) for a one-month tenor in effect on such day plus 2.5%. Any change in Term SOFR or the Benchmark Replacement shall be effective from and including the effective date of such change in Term SOFR or the Benchmark Replacement.

"Assignment" means the Assignment of Tax Increment Revenues executed by the Board and delivered in accordance with Article III hereof and any amendments thereto from time to time.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 1.03(a).

"Benchmark Replacement" means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Lender giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component) that states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Borrowing Certificate" means a certificate executed by the Developer and approved by the Lender in the form of Exhibit B hereto with respect to the disbursement of proceeds hereunder.

"Business Day" means any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions in such state are authorized or required by Law to close.

"Closing Date" means the date on which the TIF Note is issued by the Board to the Lender.

"Collateral Assignment" means the Collateral Assignment of Development and Financing Agreement dated as of the date hereof executed by the Board assigning certain of the Board's rights under the Development Agreement.

"Collateral Documents" means this Loan Agreement, the Assignment, the Collateral Assignment, and the Deed of Trust.

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Rate Change Date” or any similar or analogous definition (or the addition of a concept of an “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents). In addition, the Conforming Changes must be generally consistent with comparable changes for similarly situated borrowers of Lender.

"Consulting Architect" means that person or entity which is engaged by Board and approved by Lender for purposes of advising Lender of the progress and quality of construction and such other matters as Lender may request; the term does not necessarily imply that the person is an architect in fact.

"Deed of Trust" means the Deed of Trust, Security Agreement and Fixture Filing dated as of the date hereof between the Developer and the Lender for recording in Shelby County, Tennessee.

"Default" means any Default under this Loan Agreement as specified in and defined in Article VIII hereof.

"Developer" means Lakeland Commons, an Affiliate thereof, or any other permitted assignee thereof (including, without limitation, any successor by merger or conversion).

"Developer Loan" means any loan deemed to be made by Developer (or Guarantor on behalf of Developer) to the Board as described in Section 4(b) of the Development Agreement or in Section 2.6(b) of this Agreement.

"Development Agreement" means the Development and Financing Agreement dated as of December 27, 2018, as amended by First Amendment to Development and Financing Agreement dated as of June 21, 2021, between the Board and the Developer.

"Dollar" and "$" mean the lawful money of the United State of America.

"Economic Impact Plan" shall have the meaning given to such term in the Recitals of this Agreement.

"Eligible Costs" means (i) all Eligible Development Costs and (ii) all Transaction Costs.

"Eligible Development Costs" means all costs that are (i) incurred in connection with the development of the Project (including related improvements in the Plan Area) and the Loan and (ii) permitted under Tenn. Code Ann. § 7-53-312 and Tenn. Code Ann. §§ 9-23-101 et. seq., including without limitation the costs of designing, constructing and installing the Planned Improvements, as defined in the Development Agreement). The term "Eligible Development Costs" does not include any costs relating to privately owned land that would require a written determination from the Comptroller of the State of Tennessee pursuant to Tenn. Code Ann. § 9-23-108 (except to the extent that the Developer obtains such written determination).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States.

"Floor" means a rate of interest equal to 0%.

"Guarantors" means the Developer, Vincent D. Smith, Jr., David Andrews, and Bart Thomas.

"Guaranty" means, collectively, the Commercial Guaranties, each of even date herewith, from each of the Guarantors, as referred to in Section 2.8(e) hereof.

"Interest Rate Change Date" means the date of the Note and each succeeding first (1st) day of a calendar month commencing on ____________1, 2022, or, at Lender's option while a Benchmark Replacement is in effect, such other dates as are determined by Lender to be appropriate to reflect the tenor of the Benchmark Replacement.

"Interest Reserve Account" shall mean the initial sum of $150,000.00 deposited by Developer with Lender in an interest-bearing account to be used exclusively Board to fund any interest shortfalls under the Note.

"Loan" means the loan made under this Loan Agreement and evidenced by the TIF Note.

"Loan Documents" means the Note, this Loan Agreement, the Collateral Documents and any other document or guaranty executed in connection therewith.

"Maturity Date" means ________________.

"Net Proceeds" means the amount due to the Developer from the sale of any portion of the real property included in the Plan Area to a third party, less all necessary and customary costs and expenses associated with such sale.

"Note Payment Date" shall have the meaning given to such term in Section 2.5.

"Periodic Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR".

"Phase II Improvements" means those improvements east of Village Market Lane as shown on the Site Plan.

"Plan Area" means the area described on Exhibit A to the Economic Impact Plan.

"Project" has the meaning set forth in the Development Agreement.

"Planned Improvements" has the meaning set forth in the Development Agreement.

"Quarterly Interest Payment Date" means November 30, 2023, February 28, 2024, May 31, 2024, and August 31, 2024, and on the same days of each calendar year thereafter until the Maturity Date.

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

"Resolution" means, collectively, the IDB Resolution, the County Resolution, and the City Resolution.

"Site Plan" means the site plan for the Project attached to this Loan Agreement as Exhibit C.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"State" means the State of Tennessee.

"Tax Increment Fund" shall mean Lakeland Town Center Tax Increment Fund created under Section 7.1 of this Loan Agreement.

"Tax Increment Revenues" means all ad valorem property taxes assessed annually in respect of the Plan Area by the City and County that are allocated to the Board pursuant to the Economic Impact Plan and the Resolution.

"Tax Year" shall mean each calendar year as to which property taxes are payable with respect to the Plan Area.

“Term SOFR” means, for any day on or after the then most recent Interest Rate Change Date, the Term SOFR Reference Rate for a tenor of one month determined on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such Interest Rate Change Date, as such rate is published by the Term SOFR Administrator on such Periodic Term SOFR Determination Day; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

"TIF Note" or "Note" means the Tax Increment Revenue Note issued pursuant to Article II hereof.

"Transaction Costs" mean all out of-pocket costs and expenses incurred by the Board, the Lender, or the Developer in connection with the Loan together with all out-of-pocket fees and expenses for attorneys, accountants, appraisers, surveyors, environmental consultants, engineers, and other professional advisors incurred by the Developer in connection with the Project and the negotiation and execution of the Economic Impact Plan, the Development Agreement, and the Collateral Documents.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

ARTICLE II
THE TIF NOTE

Section 2.1 Designation. The TIF Note shall be designated "The Industrial Development Board of the City of Lakeland, Tennessee Tax Increment Revenue Note (Lakeland Town Center Development)".

Section 2.2 Principal Amount. The TIF Note shall be in an aggregate original principal amount not to exceed Nine Million Seven Hundred Fifty Thousand and No/100 Dollars ($9,750,000.00).

(a) Interest Interest Rates. Subject to paragraph (a) of this Section, the Loan shall bear interest at a rate per annum equal to the Applicable Rate.

(a) Interest Computation. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The Benchmark shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(b) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Lender will promptly notify the Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

Section 2.3 Maturity. The TIF Note shall mature on the Maturity Date, unless prepaid earlier as provided herein or in the TIF Note. Notwithstanding the Maturity Date of the Note, any Tax Increment Revenues received with respect to taxes imposed during the Allocation Period but received after the Maturity Date of the Note shall be applied to the payment of the Note if the Note has not been paid in full at such time.

Section 2.4 Interest Payments. Accrued interest shall be due and payable on the aggregate principal amount of the TIF Note outstanding from time to time as follows:

(a) Within ten (10) days of deposit of any amounts in the Tax Increment Fund, such amounts shall be applied by the Lender to accrued interest on the TIF Note, with any excess being applied as provided in Section 2.6.

(b) All accrued and unpaid interest shall be due and payable quarterly in arrears on each Quarterly Interest Payment Date during the term of the TIF Note.

(c) All accrued and unpaid interest is due and payable on the Maturity Date.

Each date upon which accrued interest is due in accordance with the foregoing subsections (b)-(c) shall be deemed a "Note Payment Date." The sources for the payment of accrued interest, and the order in which amounts shall be paid therefrom, shall be as follows: first, from Tax Increment Revenues available therefor (if any) deposited in the Tax Increment Fund; and second, from amounts payable by the Developer under the Development Agreement; and third, from amounts payable under the Guaranty. Interest shall be calculated based on a 360-day year at the interest rate specified above based on the actual number of days elapsed since the last interest payment. The Lender shall calculate the interest due and payable on each Quarterly Interest Payment Date as provided above and provide such calculation, in writing, to the Board and the Developer at least three (3) Business Days prior to such Note Payment Date. In addition, upon request, the Lender shall provide to the Board and the Developer a current statement of payments of interest and any principal reductions as provided in Section 2.6 hereof. In the event adequate funds, from the sources described above, are not available on any Quarterly Interest Payment Date or the Maturity Date during the term of the TIF Note to pay the interest accrued thereon and such amount is not paid from funds provided by the Developer, the amount of unpaid interest shall be added, to the extent permitted by law, to the principal amount of the TIF Note and shall bear interest at a rate equal to the interest rate payable under the TIF Note.

If sufficient funds are not available in the Tax Increment Fund to pay an interest payment on a Note Payment Date, then Lender may use funds in the Interest Reserve Account. The Board and Developer each hereby grants Lender a security interest in the Interest Reserve Account and all monies on deposit therein from time to time, as part of the collateral securing the Loan. The Board and Developer must maintain the Interest Reserve until the payment in full of all sums secured by the Collateral Documents. Lender shall have the sole and absolute right, but not the obligation, to disburse amounts from the Interest Reserve to pay accrued interest then due and payable on the Note and the Loan agreement. Notwithstanding the above, neither the Board nor Developer shall be required to replenish the Interest Reserve Account if Lender requires a payment therefrom.

Section 2.5 Principal Payments.

(a) Annual Principal Payments. In addition to the quarterly interest payments required by Section 2.5, beginning on October 1, 2024, and on each Annual Principal Payment thereafter, annual payments as set out on attached Exhibit D ("Annual Principal Payments") shall be due and payable, with all unpaid principal coming due on the Maturity Date. All of the sources of payment as described in Section 2.5 as to interest payments shall also be available to make such Annual Principal Payments under this Section 2.6(a). All or a portion of the Annual Principal Payment due on April 1, 2024 may be satisfied by payment of the Developer Lot sale proceeds set out in (b) below.

(b) Lot Sale Payments Developer has executed the Deed of Trust in favor of Lender to provide Lender with additional collateral to secure all obligations under the Loan Documents. The Deed of Trust encumbers three tracts of land located in Lakeland, Shelby County, Tennessee known as 9745 U.S. Highway 70, Tax Parcel No. L0150 00549; 9791 U.S. Highway 70, Tax Parcel No. L0150 00551; and 9811 U.S. Highway 70, Tax Parcel No. L0150 00552, all as more particularly described in the Deed of Trust (each a "Developer Lot" and collectively the "Developer Lots") Provided that no Default is then occurring, Lender agrees to release Developer Lots from the lien of the Deed of Trust upon receipt of a minimum of $600,000.00 (the "Minimum Lot Proceeds") for each Developer Lot.

The Minimum Lot Proceeds of any such sale shall be paid to the Lender, and Lender shall credit the amount received against subsequent Annual Principal Payments due under this Loan Agreement in order of their maturity. In the event the Developer is required to make any principal payment pursuant to this Section 2.6(b), the Developer shall be deemed to have made a loan to the Board on a non-recourse basis to enable the Board to satisfy the obligations of this Section 2.6(b). Any such loan shall bear interest at the rate then charged under the TIF Note and shall have a maturity date as the maturity date of the TIF Note. Any such loans from the Developer to the Board pursuant to this subsection shall be paid solely from the TIF Revenues, provided, however, that no portion of any such loan from the Developer to the Board shall be repaid, and no interest thereon or other amounts due with respect thereto shall be paid, so long as any amounts are past due to the Lender under the TIF Note or otherwise with respect to the TIF Note. The repayment of any loans from the Developer by the Board is expressly junior and subordinate in all respects to the full and complete payment to the Lender of any amounts then due and payable under the TIF Note and any other amounts otherwise due and payable with respect to the TIF Note. The Developer shall give the Board written notice of any loans made by the Developer pursuant to this subsection within thirty (30) days of such loan, and the Board shall, based upon such notices, keep a record of all amounts due to the Developer hereunder. The Board shall not be required to repay any amounts loaned by the Developer hereunder of which the Board has not received notice pursuant to this subsection.

Section 2.6 Prepayments. In addition to the principal payments required by Section 2.6 hereof, the Board shall have the right to prepay the TIF Note in whole or in part, at the direction of the Developer, with available amounts in the Tax Increment Fund or from such other amounts as otherwise are available to the Board, without premium or penalty, at any time upon three (3) days' notice to the Lender.

Section 2.7 Delivery of the TIF Note. In connection with the delivery of the TIF Note, there shall be delivered to or deposited with the Lender:

(a) A commitment fee equal to $25,000 and the amount of any out-of-pocket costs and attorneys' fees incurred by the Lender all of which shall be paid by Developer;

(b) copies, certified by the Secretary of the Board, of the Charter and Bylaws of the Board and the resolutions authorizing the issuance of the TIF Note and the execution, delivery and performance of this Loan Agreement and the TIF Note;

(c) copies, certified by an authorized officer of Developer, of the organizational documents of Developer and any resolutions authorizing the execution, delivery and performance of the Development Agreement and its Guaranty;

(d) copies of closing certificates and documentation required in connection with the execution and delivery of this Agreement and the Development Agreement, all in form and substance satisfactory to Lender's counsel;

(e) the executed Guaranty of each of the Guarantors regarding the repayment of the TIF Note, in form and substance satisfactory to Lender;

(f) executed originals of all other Collateral Documents;

(g) a Tennessee certificate of existence for the Board indicating that it is in good standing;

(h) an opinion of counsel to the Board in form and substance reasonably satisfactory to the Lender;

(i) originally executed complete counterparts of this Loan Agreement and the other Collateral Documents including, without limitation, the Assignment and such other documents that may be required by Lender; and

(g) the TIF Note, duly executed and issued by the Board, in an aggregate principal amount not to exceed $9,750,000.

Section 2.8 Execution, Limited Obligations. The TIF Note shall be executed on behalf of the Board with the manual signature of the Chairman, the Secretary or other duly authorized officer of the Board. **THE TIF NOTE, AND THE OBLIGATIONS OF THE BOARD UNDER THIS LOAN AGREEMENT AND THE OTHER DOCUMENTS DESCRIBED HEREIN THAT EVIDENCE OR SECURE THE TIF NOTE, SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY AND COUNTY WITHIN THE MEANING OF THE CONSTITUTION AND STATUTES OF THE STATE OR THE CHARTER OR ORDINANCES OF THE CITY AND COUNTY. IN THE EVENT THAT A DEFAULT OCCURS UNDER THIS LOAN AGREEMENT, NO JUDGMENT FOR ANY DEFICIENCY FOR THE OBLIGATIONS OF THE BOARD UNDER THE TIF NOTE, THIS LOAN AGREEMENT, OR ANY OF THE COLLATERAL DOCUMENTS SHALL BE SOUGHT OR OBTAINED AGAINST THE BOARD, EXCEPT TO THE EXTENT PAYABLE SOLELY FROM THE TAX INCREMENT REVENUES PLEDGED TO AND DESIGNATED FOR THE PAYMENT OF SUCH OBLIGATIONS**. Nothing contained in this Section 2.9 shall (x) be deemed to be a release or impairment of the indebtedness evidenced by the TIF Note or the lien of this Loan Agreement or any of the Collateral Documents except for the nonrecourse provisions of the immediately preceding sentence, or (y) preclude the Lender from realizing on the collateral described in the Collateral Documents in the event of a Default. Amounts deposited in the Tax Increment Fund and the Tax Increment Revenues shall be used only for the purposes set forth in the Development Agreement.

Section 2.9 Form of TIF Note. The TIF Note is to be in substantially the form set forth in Exhibit A attached hereto, with appropriate variations, omissions and insertions as permitted or required by this Loan Agreement, with such changes being conclusively approved by execution of the TIF Note by the Board and acceptance of the TIF Note by the Lender.

Benchmark Replacement Setting.

(a) Benchmark Replacement.

i. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, this Agreement shall be deemed amended to replace the then-current Benchmark with the Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the Lender notifies the Borrower of such benchmark Replacement; provided, however, that no replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 1.03(a) will occur prior to the applicable Benchmark Transition Start Date.

ii. No swap agreement shall be deemed to be a “Loan Document” for purposes of this Section 1.03.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Lender will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Lender will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 1.03(d). Any determination, decision or election that may be made by the Lender pursuant to this Section 1.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its reasonable discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 1.03.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Lender may modify any concept or definition of "interest period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of "Applicable Rate" and/or any concept or definition of "interest period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

ARTICLE III
COLLATERAL SECURING THE TIF NOTE

Section 3.1 Assignment of Tax Increment Revenues. As a source of and security for the payment of the TIF Note and all amounts due hereunder, the Board has assigned and pledged to the Lender, pursuant to the Assignment, all Tax Increment Revenues.

Section 3.2 Pledge of the Tax Increment Fund. To the extent of any interest of the Board therein, all moneys in the Tax Increment Fund, including, without limitation, any earnings thereon and proceeds thereof (except the amounts payable to the Board pursuant to Section 7.3(a) hereof), are hereby pledged to the payment of the principal of and interest on the TIF Note, and the Board hereby grants to the Lender a security interest therein. The Tax Increment Fund shall at all times be subject to the unrestricted right of set-off by the Lender in the event of any Default hereunder or any other failure to pay any amount due on the TIF Note. The Board hereby waives any defense or objection to the Lender's exercise of its right of set-off as provided herein. The Tax Increment Fund shall be maintained with the Lender, at the expense of the Developer, and in accounts designated by the Lender, and the Lender shall direct the investment thereof in such investments as are designated by the Board and approved by the Lender, with interest earnings thereon being deposited in the Fund with respect to which the interest earnings relate.

Section 3.3 Right of the Lender to Receive Collateral and Proceeds. The Lender is hereby authorized to receive and hold all the collateral described in this Article III as security for the TIF Note and all amounts due hereunder.

Section 3.4 Waiver of Other Rights. Other than as provided in this Loan Agreement or as subsequently provided in a separate written instrument, the Lender shall not have any right of set-off against any funds of the Board maintained in an account with the Lender and, other than with respect to rights of set-off expressly granted herein or therein, the Lender expressly waives all such rights.

ARTICLE IV
PREPAYMENT OF THE TIF NOTE BEFORE MATURITY

Section 4.1 Extraordinary Prepayment. The TIF Note is subject to prepayment upon the demand of the Lender, in whole, at a redemption price equal to 100% of the principal amount outstanding thereof plus accrued interest to the redemption date, but only from any Tax Increment Revenues available therefor or amounts payable by the Developer or by any guarantor of the Developer's obligations, in the event that:

(a) Developer fails to pay when due (or within any cure or grace period therein provided) any amount required of it under the terms of the Development Agreement and such failure continues for thirty (30) days after Lender delivers written notice of default to Developer;

(b) Any Guarantor fails to pay when due (or within any cure or grace period therein provided) any amount required of Guarantor under the terms of any Guaranty as it relates to the TIF Note and such failure continues for thirty (30) days after Lender delivers written notice of default to Guarantors;

(c) Tax Increment Revenues cease to be available for principal or interest payments on the TIF Note; or

(d) This Loan Agreement or any of the Collateral Documents becomes void, unenforceable or impossible of performance as a result of any changes in law or administrative, legislative or judicial action.

Section 4.2 Payment Due. The payment due to the Lender as a result of any prepayment of the TIF Note pursuant to this Article IV shall be paid in full within ten (10) days after the occurrence of the event pursuant to which the TIF Note must be prepaid hereunder.

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Representations and Warranties of the Board. The Board represents and warrants that:

(a) The Board is a duly established, organized and existing public corporation under the laws of the State of Tennessee.

(b) The Board has all requisite power, authority and legal right to execute and deliver this Loan Agreement, the TIF Note and the Collateral Documents and all other instruments and documents to be executed and delivered by the Board pursuant hereto or thereto, to perform and observe the provisions hereof and thereof and to carry out the transactions contemplated hereby and thereby. All corporate action on the part of the Board which is required for the execution, delivery, performance and observance by the Board of this Loan Agreement, the TIF Note and the Collateral Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Board do not contravene applicable law or any contractual restriction binding on or affecting the Board.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Board of, and performance by the Board of its obligations under, this Loan Agreement, the TIF Note or any of the Collateral Documents.

(d) This Loan Agreement is, and the TIF Note and the Collateral Documents when delivered will be, legal, valid and binding special obligations of the Board enforceable against the Board in accordance with their respective terms.

(e) There is no default of the Board in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of this Loan Agreement, the TIF Note or any of the Collateral Documents or the ability of the Board to perform its obligations hereunder or thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) There is no pending or, to the knowledge of the undersigned officers of the Board, threatened, action or proceeding before any court, governmental agency or arbitrator (i) to restrain or enjoin the issuance or delivery of the TIF Note or the collection of any revenues pledged under this Loan Agreement or any of the Collateral Documents, (ii) in any way contesting or affecting the validity, authorization or enforceability of this Loan Agreement, the TIF Note, or any of the Collateral Documents, the availability of Tax Increment Revenues to pay and secure this Loan Agreement, the TIF Note, the Development Agreement, or any of the Collateral Documents, or (iii) in any way contesting the existence or powers of the Board which could have an adverse effect on the validity, authorization or enforceability of this Loan Agreement, the TIF Note or any of the Collateral Documents with respect to the Board or on the ability of the Board to carry out its obligations hereunder or thereunder.

(g) In connection with the authorization, issuance and sale of the TIF Note, the Board has complied with all provisions of the Act and Sections 8-44-104, et seq., of Tennessee Code Annotated.

(h) The Board has not assigned or pledged and will not assign or pledge its interest in the Tax Increment Revenues with respect to the period prior to payment in full of the indebtedness evidenced by the TIF Note for any purpose other than to secure the TIF Note under this Loan Agreement. The TIF Note constitutes the only bond or note or obligation of the Board in any manner payable from the revenues to be derived from the Tax Increment Revenues.

(i) Other than the TIF Note, no bonds or notes or other obligations have been or will be issued payable, in whole or in part, from the Tax Increment Revenues.

(j) Other than as expressly provided in this Loan Agreement, the Tax Increment Fund is not subject to any lien, security interest or right of set-off in favor of any lender, creditor or claimant of the Board.

(k) The Board is not in default under any provision of its Charter or Bylaws and is not in default under any of the provisions of the laws of the State which default would affect its existence or its powers referred to in Section 5.1(b) hereof.

(l) Pursuant to the Economic Impact Plan, the Board hereby designates the Plan Area as a group of parcels of property with respect to which the Tax Increment Revenues shall be allocated and calculated.

Section 5.2 Covenants of the Board. The Board covenants with the Lender as follows:

(a) The Board will not allow the Tax Increment Fund to become subject to any lien, security interest or right of set-off in favor of any lender, creditor or claimant of the Board, other than the Lender pursuant to this Loan Agreement and the Collateral Documents.

(b) The Board will not enter into any agreement or instrument that might in any way prevent or materially impair its ability to perform its obligations hereunder or under this Loan Agreement, the TIF Note or any of the Collateral Documents.

(c) So long as the TIF Note shall remain outstanding, the Board will, upon the reasonable request of the Lender:

(i) take all action and do all things that it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under this Loan Agreement, the TIF Note and the Collateral Documents; and

(ii) execute, acknowledge where appropriate, and deliver from time to time, promptly at the request of the Lender, all such instruments and documents as in the reasonable opinion of the Lender are necessary or desirable to carry out the intent and purpose of this Loan Agreement, the TIF Note and the Collateral Documents.

(d) So long as the TIF Note shall remain outstanding, the Board will not, without the prior written consent of the Lender:

(i) take any action that, directly or indirectly, adversely affects its existence or status as a public corporation under the laws of the State; or

(ii) take any action that would cause or permit the City and County not to collect and pay to the Board (or deposit into the Tax Increment Fund) the Tax Increment Revenues.

ARTICLE VI
DISBURSEMENTS OF PROCEEDS

Section 6.1 Disbursements of Proceeds. Proceeds of the Loan shall be disbursed solely in the manner provided herein. The proceeds of the Loan shall be used solely to refinance the Simmons Loan and pay Transaction Costs. The proceeds of the Loan may not be repaid and reborrowed.

Section 6.2 Disbursement Procedure. On the Closing Date, the Lender will disburse $9,600,000.00 at the direction of the Developer and with the approval of the Lender, to pay Eligible Costs, all as are detailed on a Borrowing Certificate delivered to the Board and the Lender.

ARTICLE VII
TAX INCREMENT FUND

Section 7.1 Establishment of Fund. There are hereby established by the Board a special fund to be held in a segregated account with Lender called the "Lakeland Town Center Tax Increment Fund" into which shall be deposited all Tax Increment Revenues and any interest earnings thereon. Such funds shall be established with Lender in an interest-bearing account.

Section 7.2 Disbursements from Tax Increment Fund.

(a) Within ten (10) days of deposit of any Tax Increment Revenues in the Tax Increment Fund, Tax Increment Revenues on deposit in the Tax Increment Fund shall be applied as follows: first, to the payment of the interest due under the TIF Note as set forth in Section 2.5 above; second, so long as the Maturity Date has not occurred and no Default then exists, to reduce the outstanding balance due under any Developer Loan(s); and last, to pay the principal due under the TIF Note as set forth in Section 2.6(a) above.

(b) In the event of prepayment in whole of the TIF Note under Article IV hereof, the entire amount of the Tax Increment Fund shall be disbursed to pay the TIF Note.

ARTICLE VIII
DEFAULTS AND REMEDIES

Section 8.1 Defaults. Each of the following events shall constitute a "Default" hereunder:

(a) default in the due and punctual payment of interest on or principal of the TIF Note on any Quarterly Interest Payment Date or any Annual Principal Payment Date or the Maturity Date (without regard to the sufficiency of Tax Increment Revenues available therefor) after ten (10) days' written notice thereof to the Board and the Developer;

(b) the occurrence of a breach under or failure to comply with terms of the Development Agreement, any of the Collateral Documents or any Guaranty and the passage of the period of time, if any, allowed thereunder for the remedying or curing of such breach or failure of compliance;

(c) the occurrence of a breach under or failure to comply with terms of any other of the covenants, agreements or conditions on the part of the Board contained in this Loan Agreement or the TIF Note (except as described in Sections 8.1(a) hereof) and the failure to remedy the same within thirty (30) days after written notice thereof to the Board, provided, however, that if any such breach or failure to comply (i) is such that it cannot be cured or remedied within such thirty-day period, (ii) does not involve the payment of any monetary sum, and (iii) does not place any rights or interest in collateral of the Lender in immediate jeopardy, then such breach or failure to comply shall not constitute a Default if corrective action is instituted by the Board to the reasonable satisfaction of the Lender within such thirty-day period and diligently pursued until such breach or failure to comply is corrected; provided, further, however, that in no event shall any such cure period exceed ninety (90) days without the express written consent of the Lender, which may be withheld for any reason or no reason. If the Board shall fail to correct or cure such breach or failure to comply within such ninety-day period, a Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(d) if Developer has failed to complete the Phase II Improvements on or before October 1, 2024.

Section 8.2 Acceleration. Upon the occurrence of any Default hereunder, Lender may, after first providing Developer with written notice of such Default and a period of thirty (30) days in which to cure such Default, declare the principal of the TIF Note and all accrued and unpaid interest thereunder to be immediately due and payable. Upon any acceleration hereunder, Lender shall immediately be entitled to set-off or disburse to itself all amounts in the Tax Increment Fund and to receive thereafter all Tax Increment Revenues until the TIF Note is paid in full.

Section 8.3 Other Remedies.

(a) Upon the occurrence of a Default, and subject to the provisions of Section 2.9 hereof, the Lender may pursue any available remedy at law or in equity to enforce the payment of the principal of and interest on the outstanding TIF Note and to enforce the Collateral Documents and all rights derived therefrom.

(b) No remedy conferred upon or reserved to the Lender by the terms of this Loan Agreement or the other Collateral Documents is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Lender hereunder or now or hereafter existing at law or in equity.

(c) No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

(d) No waiver of any Default hereunder, whether by the Lender or by any holder of the TIF Note, shall extend to or shall affect any subsequent Default or shall impair any rights or remedies consequent thereon.

Section 8.4 Waiver. Upon the occurrence of a Default, to the extent that such rights may then lawfully be waived, neither the Board nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any stay or extension laws of any jurisdiction now or hereafter in force, in order to prevent or hinder the collection of the TIF Note or the enforcement of this Loan Agreement or any of the other Collateral Documents, and the Board, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws.

By written notice to the Board provided in accordance with Section 9.2 hereof, the Lender shall have the right to waive any breach of any promise made in the TIF Note, or any Default under Section 8.1 hereof, or any default under any of the Collateral Documents or other documents relating to, securing or otherwise executed in connection with the TIF Note, and its consequences. In case of any such waiver or rescission, then and in every such case the Board and the Lender shall be restored to their former positions and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other breach, Default or default or impair any right consequent thereon.

Section 8.5 Application of Moneys. All moneys received by the Lender pursuant to any right given or action taken under the provisions of this Article VIII shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees of, and expenses, liabilities and advances incurred or made by, the Lender, be allocated to and applied first to accrued interest and then to principal due on the TIF Note.

Section 8.6 Board Obligations. The Board hereby grants to the Lender the full authority for the account of the Board to perform any covenant or obligation of the Board hereunder, in the name and stead of the Board, with full power to do any and all things and acts to the same extent that the Board could do and perform any such things and acts and with power of substitution.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Term of Loan Agreement. This Loan Agreement shall remain in full force and effect from the date hereof to and including such time as all of the TIF Note and the fees and expenses of the Lender relating to this Loan Agreement, the TIF Note and the Collateral Documents shall have been fully paid.

Section 9.2 Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the Business Day following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below:

If to the Developer to:

Lakeland Commons, LLC
c/o Vincent Smith, Jr.
355 Tara Lane
Memphis, Tennessee 38111

If to the Lender to:

FirstBank
6815 Poplar Ave., Ste. 100
Memphis, Tennessee 38138

If to the Board to:

The Industrial Development Board of the
City of Lakeland, Tennessee
c/o Chairman
10001 Highway 70
Lakeland, Tennessee 38002

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices. No such notice, demand, tender or other communication under this Agreement shall be valid unless the Lender receives a copy thereof as provided above.

Section 9.3 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Lender and the Board and their respective successors and assigns.

Section 9.4 Severability. In any event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof or thereof.

Section 9.5 Amendments, Changes and Modifications. This Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Lender and the Board.

Section 9.6 Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State, and the venue of any litigation with respect hereto shall be exclusively in state court in Shelby County or federal court in the U.S. District Court for the Western District of Tennessee.

Section 9.8 Captions. The captions and headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Loan Agreement.

Section 9.9 Payment or Performance on Business Days. If the date for any payment hereunder, or the last date for performance of any act or the exercising of any right as provided in this Loan Agreement, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day.

Section 9.10 No Liability of Officers. No recourse under or upon any obligation, covenant or agreement herein or in the TIF Note, or under any judgment obtained against the Board, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, employee, director or officer, as such, past, present, or future, of the Board, either directly or through the Board, or otherwise, for the payment for or to the Board or any receiver thereof, or for or to the holder of the TIF Note, of any sum that may be due and unpaid by the Board upon the TIF Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, employee, director or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Board or any receiver thereof, or for or to the holder of the TIF Note, of any sum that may remain due and unpaid upon the TIF Note, is hereby expressly waived and released as a condition of and consideration for the execution of this Loan Agreement and the issuance of the TIF Note.

Section 9.11 No Liability of City and County. **NEITHER THE CITY NOR THE COUNTY SHALL IN ANY EVENT BE LIABLE FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER HEREIN OR INDEBTEDNESS BY THE BOARD, AND NEITHER THE TIF NOTE NOR ANY OF THE AGREEMENTS OR OBLIGATIONS OF THE BOARD CONTAINED IN THIS LOAN AGREEMENT OR OTHERWISE SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF THE CITY AND COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER, PROVIDED, HOWEVER, THAT THE TERMS OF THIS SECTION 9.11 SHALL IN NO WAY LIMIT OR AFFECT THE OBLIGATION OF THE CITY AND COUNTY TO REMIT THE TAX INCREMENT REVENUES FOR THE BENEFIT OF THE LENDER AND THE BOARD.**

Section 9.12 Interest and Charges. Notwithstanding any provision herein to the contrary, it is the intent of the Lender and the Board that neither the Lender nor any subsequent holder of the indebtedness evidenced by this Loan Agreement or the TIF Note shall be entitled to receive, collect, reserve or apply, as interest or other charges, any amounts in excess of the maximum amounts legally permitted to be charged under applicable law or regulations. In the event this Loan Agreement or the TIF Note requires a payment of interest or other charges that exceeds the maximum amounts legally permitted to be charged under applicable law or regulations, such interest or other charges, as the case may be, shall not be received, collected, charged or reserved until such time as such interest or other charges, as the case may be, together with all other interest and other charges then payable, fall within the maximum amounts legally permitted to be charged under applicable law and regulations. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the amount provided by application of the maximum lawful rate of interest, the Board and the Lender, to the greatest extent permitted under applicable law, (a) shall exclude voluntary prepayments and the effects thereof, and (b) shall amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire term hereof; provided, however, that if the principal indebtedness evidenced hereby is paid in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence hereof exceeds the amount provided by application of the maximum lawful rate of interest, the Lender shall refund to the Board the amount of such excess or credit the amount of such excess against the principal portion of the principal indebtedness hereunder as of the date it was received, and, in such event, the Lender shall not be subject to any penalties provided by any laws for contracting for, charging, reserving, collecting or receiving interest in excess of the amount provided by application of the maximum lawful rate of interest. The term "maximum lawful rate of interest" as used herein shall mean a rate of interest equal to the maximum lawful rate of interest permitted to be charged under the applicable laws and regulations of the State of Tennessee.

[Signatures to follow on next page]

IN WITNESS WHEREOF, the Board has caused this Loan Agreement to be executed in its name and the Lender has caused this Loan Agreement to be executed in its name, all as of the date first above written.

BORROWER:

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE

By:____
Chairman___________

ATTEST:

____
Secretary

LENDER:

FIRSTBANK

By:____
Title:____

Developer joins in this Loan Agreement for the limited purpose of agreeing to the provisions of <u>Section 2.6(b)</u>.

DEVELOPER:

LAKELAND COMMONS, LLC

By: ____
Vincent D. Smith, Jr., President

<u>**EXHIBIT A**</u>

<u>**TIF Note Form**</u>

EXHIBIT B

BORROWING CERTIFICATE

DISBURSEMENT REQUEST

To:	FirstBank 6815 Poplar Avenue, Suite 100 Memphis, Tennessee 38138	cc:	The Industrial Development Board of the City of Lakeland, Tennessee c/o Chairman 10001 Highway 70 Lakeland, Tennessee 38002

Re: Loan evidenced by The Industrial Development Board of the City of Lakeland, Tennessee Tax Increment Revenue Note (Lakeland Town Center Development) in the principal amount not to exceed $9,750,000 dated _________________, 2022 (the "Loan"), made pursuant to a Loan Agreement, dated as of _______________, 2022 (the "Loan Agreement"), between The Industrial Development Board of the City of Lakeland, Tennessee (the "Board") and FirstBank ("Lender")

You are hereby authorized and requested to disburse pursuant to Article VI of the Loan Agreement the sum of $_____________ from the Tax Increment Fund created pursuant to the Loan Agreement. In connection with such disbursement, the undersigned hereby certifies as follows:

(a) All amounts disbursed shall be applied to the payment of or the reimbursement to the Developer for the payment of costs relating to Eligible Costs.

(b) With the delivery of this Certificate, all requirements for disbursement of amounts pursuant to this request under Article VI of the Loan Agreement have been satisfied.

Please disburse all such amounts to the parties in the manner described on Exhibit A attached hereto.

All capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Loan Agreement.

Dated as of ______________, 2022.

LAKELAND COMMONS, LLC

By:_____________________________________
Name: __________________________________
Title: ___________________________________

APPROVED BY:

FIRSTBANK

By:____________________________________
Title:___________________________________

EXHIBIT C

Site Plan

See attached.

EXHIBIT D

Annual Principal Payments

Payment Due Date	Principal Payment Due
October 1, 2024	$1,600,000.00
April 1, 2025	$ 410,000.00
April 1, 2026	$ 440,000.00
April 1, 2027	$ 470,000.00
April 1, 2028	$ 505,000.00
April 1, 2029	$ 545,000.00
April 1, 2030	$ 585,000.00
April 1, 2031	$ 625,000.00
April 1, 2032	$ 670,000.00
April 1, 2033	$ 720,000.00

33875537.3

<u>EXHIBIT D</u>

TIF Assignment

See attached.

ASSIGNMENT OF TAX INCREMENT REVENUES

THIS ASSIGNMENT OF TAX INCREMENT REVENUES (the "Assignment") is entered into as of ________________ ___, 2022, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et. seq. (the "Board"), and **FIRSTBANK**, a Tennessee banking corporation with offices in Memphis, Tennessee, and its successors and assigns (collectively, the "Lender").

RECITALS:

A. The Lender and the Board have entered into a Loan Agreement, dated as of the date hereof (as it may be amended from time to time, the "Loan Agreement"). Any capitalized terms not otherwise defined hereunder shall have the meanings given them in the Loan Agreement.

B. One condition to the Lender's agreement to extend credit under the Loan Agreement to the Board is the execution and delivery of this Assignment of the Board's rights to receive the Tax Increment Revenues.

C. The Board has agreed to cause to be deposited all of the Tax Increment Revenues into The Lakeland Town Center Tax Increment Fund established under the Loan Agreement.

NOW, THEREFORE, in consideration of the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

TERMS:

1. Definition of Secured Indebtedness. As used in this Assignment, "Secured Indebtedness" shall mean all of the obligations of the Board under the documents and instruments described in Exhibit A hereto, and all modifications, extensions and renewals thereof.

2. Assignment; Lien and Pledge. To secure the payment and performance of the Secured Indebtedness, the Board hereby pledges and assigns to the Lender and grants to the Lender a first priority lien upon, pledge of and security interest in the Board's right to receive the Tax Increment Revenues.

3. No Assumption of Obligations. Neither the Lender's execution hereof nor its exercise of any remedies hereunder shall cause the Lender to assume any obligations of the Board under the Loan Agreement or any document relating thereto.

4. Representations and Warranties. The Board represents and warrants to the Lender as follows:

(a) Validity of Rights. The Board is duly entitled to receive the Tax Increment Revenues imposed with respect to the Allocation Period, has complied with all applicable laws and regulations relating thereto and has full power and authority to segregate such Tax Increment Revenues and pledge them to the Lender for the repayment of the Secured Indebtedness.

(b) No Other Lien. The Tax Increment Revenues are not subject to any lien, assignment, pledge, security interest or encumbrance other than the lien and pledge of this Assignment in favor of the Lender.

(c) No Conflicts. The Board is not a party to any contract or agreement and is not subject to any contingent liability that does or may impair the Board's ability to perform under the terms of this Assignment.

(d) No Defaults. The execution and performance of this Assignment will not cause a default under any other contract or agreement to which the Board is a party or any property of the Board is subject, and will not result in the imposition of any charge, penalty, lien or other encumbrance against any of the Board's property, except in favor of the Lender.

(e) Legal and Binding Agreement. The execution and performance of this Assignment will not violate any judicial or administrative order or governmental law or regulation, and this Assignment is valid, binding and enforceable in every respect according to its terms.

(f) No Consent Required. The execution and performance of this Assignment by the Board do not require the consent of or the giving of notice to any third party including, without limitation, any other lender, governmental body or regulatory authority.

(g) Valid Assignment and Lien. This Assignment provides the Lender with a valid assignment of and lien upon and pledge of the Tax Increment Revenues.

5. Covenants. The Board covenants with the Lender as follows:

(a) Performance of Contract Obligations. The Board shall continue to duly comply with all requirements in order to continue to be entitled to receive the Tax Increment Revenues.

(b) No Amendment Without Consent. The Board shall not reduce, cancel or waive any right of the Board to receive the Tax Increment Revenues without the prior written approval of the Lender. Any attempted reduction, cancellation or waiver without such prior written approval of the Lender shall be void.

(c) The Tax Increment Fund. The Board will cause all Tax Increment Revenues to be deposited in the Tax Increment Fund.

(d) No Other Lien. The Board shall not grant nor allow any security interest or lien to attach to the Tax Increment Revenues, except for the pledge and lien in favor of the Lender provided for herein.

(e) Further Assurances. The Board agrees to execute any and all necessary financing statements or other documents in order to perfect the lien and pledge granted herein or otherwise to complete and/or perfect this Assignment. The Board authorizes the Lender to file Uniform Commercial Code financing statements (and any financing statement amendments and correction statements thereto deemed necessary by the Lender) at any time deemed necessary or desirable by the Lender, covering the Lender's lien against the Tax Increment Revenues and containing such legends, descriptions or statements as the Lender shall deem necessary or desirable to protect the Lender's interest. The Board shall not file any amendments, correction statements or termination statements relating to this Assignment or the Lender's rights hereunder without the prior written consent of the Lender.

6. Lender's Rights. The Lender shall be entitled to avail itself of all rights and remedies as may now or hereafter exist, at law or in equity, for the collection of the Secured Indebtedness or any part thereof and the enforcement of the lien and pledge created hereby. The resort to any remedy provided hereunder or provided by the Uniform Commercial Code as adopted in the State of Tennessee, or by any other applicable law, shall not prevent the concurrent employment of any other appropriate remedy or remedies. The subsequent taking of additional collateral for the Secured Indebtedness or any part thereof shall not effect

a release or termination of this Assignment or any terms or provisions hereof. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by the Lender either independently of or concurrently with any other right, power or remedy of the Lender contained herein or otherwise. The Lender shall have the right, but without the obligation so to do, to take any such action that the Lender may deem necessary to prevent the material impairment of the lien and pledge of the Tax Increment Revenues provided by this Assignment, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the lien and pledge of this Assignment or the rights or powers of the Lender.

7. Recitals. The Board warrants and agrees that the recitals set forth at the beginning of this Assignment are true.

8. No Default. The Board warrants that, as of the execution of this Assignment, no default exists hereunder.

9. Default Defined. A "Default" as defined under the Loan Agreement shall constitute a default under this Assignment.

10. Remedies Upon Default. Upon the occurrence of a default hereunder, the Lender may pursue any or all remedies available under the Loan Agreement or any other document evidencing or securing the Secured Indebtedness or otherwise available at law or in equity, without any notice to the Board except as otherwise required by law.

11. Indulgence Not Waiver. The Lender's indulgence in the existence of a default hereunder or any other departure from the terms of this Assignment shall not prejudice the Lender's rights to declare a default or otherwise demand strict compliance with this Assignment.

12. Cumulative Remedies. The remedies provided the Lender in this Assignment are not exclusive of any other remedies that may be available to the Lender under any other document or at law or in equity.

13. Amendment and Waiver in Writing. No provision of this Assignment can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.

14. Assignment. This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the Board and the Lender, except that the Board shall not assign any rights or delegate any obligations arising hereunder without the prior written consent of the Lender. Any attempted assignment or delegation by the Board without the required prior written consent of the Lender shall be void.

15. Entire Agreement. This Assignment, the Loan Agreement and the other written agreements between the Board and the Lender regarding the Tax Increment Revenues represent the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein and therein.

16. Severability. The provisions of this Assignment shall be deemed severable. If any part of this Assignment shall be held unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed herein.

17. Time of Essence. Time is of the essence of this Assignment, and all dates and time periods specified herein shall be strictly observed, except that the Lender may permit specific deviations therefrom by its written consent.

18. Applicable Law. The validity, construction and enforcement of this Assignment shall be determined according to the laws of Tennessee, in which state this Assignment has been executed and delivered.

19. Notices. All notices required or permitted to be given under this Assignment shall be in writing and shall be given in the manner and to the addresses specified for notices pursuant to the Loan Agreement, and the effectiveness of each such notice shall be determined as provided in the Loan Agreement for a notice given thereunder.

20. Execution in Counterparts. This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signatures to follow on next page]

IN WITNESS WHEREOF the parties have executed this Assignment as of the date first stated above.

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE

By:____
Title:____

ATTEST:

____
Secretary

FIRSTBANK

By:____
Title:____

<u>Exhibit A</u>

List of TIF Documents

1. The Tax Increment Revenue Note (The Lakeland Town Center), dated as of the date hereof, issued by The Industrial Development Board of the City of Lakeland, Tennessee and payable to FirstBank in the original principal amount of $9,750,000, as it may be amended, modified, extended or renewed from time to time;

2. The Loan Agreement, dated as of as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank, as it may be amended, modified, extended or renewed from time to time;

3. The Development and Financing Agreement, dated December 27, 2018, by and between The Industrial Development Board of the City of Lakeland, Tennessee and Lakeland Commons, LLC, as successor by conversion to Lakeland Commons, LP, as amended by ____________ dated as of _____________, and _____________ dated of _____________, as it may be further amended, modified, extended or renewed from time to time;

4. The Collateral Assignment of Development Agreement, dated as of as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank; and

5. This Assignment of Tax Increment Revenues, dated as of as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank.

EXHIBIT E

Collateral Assignment

See attached.

COLLATERAL ASSIGNMENT OF
DEVELOPMENT AND FINANCING AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AND FINANCING AGREEMENT (the "Collateral Assignment") is entered into as of ________________ ___, 2022, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et. seq. (the "Board"), and **FIRSTBANK**, a Tennessee banking corporation with offices in Memphis, Tennessee (the "Lender").

RECITALS

A. The Lender and the Board have entered into a Loan Agreement, dated as of the date hereof (as it may be amended from time to time, the "Loan Agreement"). Any capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

B. The Board has agreed to secure repayment of amounts due to the Lender under the TIF Note and the Loan Agreement by the collateral assignment of the Development and Financing Agreement dated ________________, as amended by __________, dated as of ______________ and ____________, dated as of _________________ (as it may be amended from time to time, the "Development Agreement"), by and between the Board and Lakeland Commons, LLC, as successor by conversion to Lakeland Commons, LP, a Tennessee limited partnership ("Lakeland Commons"). Lakeland Commons, an Affiliate thereof, or any other permitted assignee thereof (including, without limitation, any successor by merger or conversion) is referred to herein as the "Developer".

C. The Lender agrees to accept, among other things, this Collateral Assignment in consideration of its extending credit pursuant to the Loan Agreement and the TIF Note.

NOW, THEREFORE, in consideration of the Recitals above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. For purposes of this Collateral Assignment, the term "Secured Indebtedness" shall mean all amounts at any time due to the Lender under the documents and instruments described in Exhibit A hereto, and all modifications, extensions and renewals thereof (collectively, the "TIF Documents"). The Board hereby assigns to the Lender as collateral for the payment in full of the Secured Indebtedness, and pledges to the Lender and grants a security interest to the Lender in the following (collectively, the "Collateral"): (i) any and all amounts payable by the Developer to or on behalf of the Board under the terms of the Development Agreement, including, without limitation, the required payments described in Section 4 of the Development Agreement, (ii) the present and continuing right to make claim for, collect, receive and retain all such amounts, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Board is or may become entitled to do with respect to all such rights and payments under the Development Agreement, and (iii) all other rights, privileges and remedies of the Board under the Development Agreement; provided, however, that (a) the Collateral shall not include the Board's inspection rights and rights to receive amounts payable by the Developer to the Board as reimbursement for costs and expenses incurred by the Board pursuant to the provisions of Section 21 of the Development Agreement and (b) the Board shall retain the right to enforce either on its own or jointly with the Lender, the obligations of the Developer under Section 3 of the Development Agreement and to declare a default of the Developer under the Development Agreement if the Developer breaches any of such obligations. The Developer shall be subrogated to all rights of the Lender in the pledged Collateral to secure any loans made by the Developer pursuant to the Development Agreement to the extent that the Developer

is authorized to exercise such rights pursuant to the termis of the Development Agreement and other TIF Documents.

2. Upon payment in full of the Secured Indebtedness and all other amounts due and the performance of all other obligations under the terms of the TIF Documents, this Collateral Assignment shall be null and void.

3. The Board hereby covenants with and warrants and represents to the Lender that:

(a) The Board is not a party to any contract or agreement, and is not subject to any contingent liability, that does or may impair the Board's ability to perform under the terms of this Collateral Assignment;

(b) The execution and performance of this Collateral Assignment will not cause a default under any other contract or agreement to which the Board is a party or to which any property of the Board is subject, and will not result in the imposition of any charge, penalty, lien or other encumbrance against any of the Board's property, except in favor of the Lender;

(c) The execution and performance of this Collateral Assignment will not violate any judicial or administrative order or governmental law or regulation, and this Collateral Assignment is valid, binding and enforceable in every respect according to its terms;

(d) The execution and performance of this Collateral Assignment by the Board do not require the consent of or the giving of notice to any third party including, without limitation, any other lender, governmental body or regulatory authority;

(e) This Collateral Assignment provides the Lender with a valid assignment of and lien upon and pledge of the Collateral;

(f) The Development Agreement is in full force and effect, and no default, or event that with the passage of time or giving of notice or both would constitute a default, has occurred thereunder;

(g) Without the prior written consent of the Lender, the Board shall not, either orally or in writing, modify, extend or in any way alter the terms of the Development Agreement or accept a surrender of the Development Agreement, grant any consent or approval under the Development Agreement, or waive, excuse, condone or in any manner release or discharge the Developer of or from any of the obligations, covenants, conditions and agreements to be performed by the Developer in the manner and at the place and time specified therein. The Board hereby expressly releases, relinquishes and surrenders unto the Lender all of its right, power and authority to amend, modify, cancel, terminate or in any way alter the terms or provisions of the Development Agreement without the prior written consent of the Lender;

(h) Without the Lender's prior written consent, the Board shall not terminate or permit the termination of the Development Agreement nor release the Developer from any obligation thereunder; and

(j) The Development Agreement is not subject to any lien, assignment, pledge, security interest or encumbrance other than the lien and pledge of this Collateral Assignment in favor of the Lender.

4. The Board shall remit to the Lender any and all sums received with respect to the Collateral, including, without limitation, any amounts received by the Board under the provisions of the Development Agreement, as and when received, except for amounts paid to the Board as reimbursement for expenses of the Board as provided in Section 21 of the Development Agreement. The Lender is entitled, but not

required, to act in the place and stead of the Board as necessary to perform the Board's obligations or enforce the Board's rights under the Development Agreement with respect to any such payments, and any costs and expenses incurred by the Lender in such action shall become part of the Secured Indebtedness. The Board hereby irrevocably appoints the Lender as its attorney-in-fact and grants to the Lender all rights and powers to act in its place and stead with respect to the Collateral, subject to and in accordance with the terms and conditions of the TIF Documents.

5. The Lender shall be entitled to avail itself of all other rights and remedies as may now or hereafter exist, at law or in equity, for the collection of the Secured Indebtedness or any part thereof and the enforcement of the lien and pledge created hereby. The resort to any remedy provided hereunder or provided by the Uniform Commercial Code as adopted in the State of Tennessee, or by any other applicable law, shall not prevent the concurrent employment of any other appropriate remedy or remedies. **Notwithstanding the foregoing, in the event that a default occurs hereunder, no judgment for any deficiency upon the Secured Indebtedness shall be sought or obtained against the Board, except with respect to the funds pledged hereunder and any Tax Increment Revenues**. Nothing contained in this paragraph shall (i) be deemed to be a release or impairment of the Secured Indebtedness or any part thereof or the lien and pledge of this Collateral Assignment or the Loan Agreement, or (ii) preclude the Lender from (1) exercising its rights and remedies against any other collateral for the Secured Indebtedness or any part of such other collateral, or (2) enforcing any other rights of the Lender against third parties other than the Board, including, without limitation, any remedies the Lender may have under this Collateral Assignment, the Loan Agreement, any of the Collateral Documents or any Guaranty. The subsequent taking of additional collateral for the Secured Indebtedness or any part thereof shall not effect a release or termination of this Collateral Assignment or any terms or provisions hereof. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by the Lender either independently of or concurrently with any other right, power or remedy of the Lender contained herein or otherwise. The Lender shall have the right, but without the obligation so to do, to take any such action that the Lender may deem necessary to prevent the material impairment of the security provided by this Collateral Assignment, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the lien and pledge of this Collateral Assignment or the rights or powers of the Lender.

6. The Board agrees to execute any and all necessary financing statements or other documents in order to perfect the lien and pledge granted herein or otherwise to complete and/or perfect this Collateral Assignment. The Board authorizes the Lender to file Uniform Commercial Code financing statements (and any financing statement amendments and correction statements thereto deemed necessary by the Lender), at any time deemed necessary or desirable by the Lender, covering the Lender's lien against the Collateral and containing such legends, descriptions or statements as the Lender shall deem necessary or desirable to protect the Lender's interest. The Board shall not file any amendments, correction statements or termination statements relating to this Collateral Assignment or the Lender's rights hereunder without the prior written consent of the Lender.

7. This Collateral Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the Board and the Lender, except that the Board shall not assign any rights or delegate any obligations arising hereunder without the prior written consent of the Lender.

8. No provisions of this Collateral Assignment shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

9. The provisions of this Collateral Assignment shall be deemed severable. If any part of this Collateral Assignment shall be held unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed herein.

10. This Collateral Assignment and the other written agreements between the Board and the Lender referred to herein represent the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein and therein.

11. The validity, construction and enforcement of this Collateral Assignment shall be determined according to the laws of the State of Tennessee, in which state this Collateral Assignment has been executed and delivered.

12. All notices required or permitted to be given under this Collateral Assignment shall be in writing and shall be given in the manner and to the addresses specified for notices pursuant to the Loan Agreement, and the effectiveness of each such notice shall be determined as provided in the Loan Agreement for a notice given thereunder.

13. This Collateral Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signatures to follow on next page]

IN WITNESS WHEREOF the parties have executed this Collateral Assignment as of the date first stated above.

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF LAKELAND, TENNESSEE

By:____
Title:_______________________________________

ATTEST:

____
Secretary

FIRSTBANK, a Tennessee banking corporation

By:____
Title:_______________________________________

The Developer hereby executes this Collateral Assignment to acknowledge its consent to (i) the assignment of the Development Agreement as provided herein, and (ii) the exercise by the Lender of all of the Board's rights, privileges and remedies as set forth in the Development Agreement. The Developer hereby further agrees that no other consent by the Developer shall be required for any further assignment of the rights and remedies of the Board under the Development Agreement or in connection with any transfer by the Lender of the Secured Indebtedness or any part thereof.

LAKELAND COMMONS, LLC

By: ____
Vincent D. Smith, Jr., President

Exhibit A

List of TIF Documents

1. The Tax Increment Revenue Note (The Lakeland Town Center), dated as of the date hereof, issued by The Industrial Development Board of the City of Lakeland, Tennessee and payable to FirstBank in the original principal amount of $9,750,000, as it may be amended, modified, extended or renewed from time to time;

2. The Loan Agreement, dated as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank, as it may be further amended, modified, extended or renewed from time to time;

3. The Development and Financing Agreement, dated December 27, 2018, as amended by ___________, dated as of ____________, and _________ dated as of ____________, by and between The Industrial Development Board of the City of Lakeland, Tennessee and Lakeland Commons, LLC, as successor by conversion to Lakeland Commons, LP, as it may be amended, modified, extended or renewed from time to time;

4. This Collateral Assignment of Development and Financing Agreement, dated as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank, as it may be amended, modified, extended or renewed from time to time; and

5. The Assignment of Tax Increment Revenues, dated as of the date hereof, by and between The Industrial Development Board of the City of Lakeland, Tennessee and FirstBank.

EXHIBIT F

Planned Improvements

Phase 2 TIF		Estimate	
Soft Cost			
Architecture		$665,000.00	
Engineering		$112,000.00	
Planning/Consulting		$13,000.00	
Legal		$50,000.00	
MLGW		$375,000.00	
Interest Reserve		$550,000.00	
Inspection Fees		$30,000.00	
Insurance/Bonding		$35,000.00	
Subtotal			$1,830,000.00
Hard Cost			
Testing		50,000.00	
Earthwork		$660,000.00	
Undercuting		$25,000.00	
Erosion Control		$55,000.00	
Sewer		$145,000.00	
Storm Drainage		$475,000.00	
Retaining Walls		$535,000.00	
Water		$340,000.00	
Subtotal			$2,285,000.00
Total			$4,115,000.00

For purposes of clarity the term “Eligible Costs” includes all out-of-pocket fees and expenses for attorneys, accountants, appraisers, surveyors, environmental consultants, engineers, and other professional advisors incurred by Developer in connection with the Tax Increment Incentive and the negotiation and execution of this Agreement.

EXHIBIT G

Payment Request

To: Industrial Development Board of the City of Lakeland, Tennessee
c/o Chairman
10001 Highway 70
Lakeland, Tennessee 38002

Re: Amended and Restated Development and Financing Agreement dated ______________, 2022 (the "Development Agreement"), between Lakeland Commons, LLC, a Tennessee liability company ("Lakeland Commons"), and Industrial Development Board of the City of Lakeland, Tennessee (the "Board")

Pursuant to Section 3 of the Development Agreement, please disburse the sum of $_____________ from the Tax Increment Fund. In connection with such disbursement, the undersigned hereby certifies as follows:

(a) All amounts disbursed will be applied to the payment of or the reimbursement to Lakeland Commons for Eligible Costs, and the Planned Improvements to which such Eligible Costs relate (if applicable) have been completed in material compliance with the plans and specifications previously provided to the Board or its Construction Consultant, to the extent applicable under the Development Agreement. The Construction Consultant has inspected and approved the Planned Improvements and Eligible Costs, to the extent its approval is required under the Development Agreement.

(b) With the delivery of this Payment Request, all requirements for this disbursement under Section 3 of the Development Agreement have been satisfied in all material respects.

(c) As of the date of this Payment Request, Lakeland Commons has complied in all material respects with the applicable portions of the LBP Obligation, subject to any cure rights expressly provided to Lakeland Commons pursuant to Section 8 of the Development Agreement.

Please disburse all such amounts to the parties in the manner described on Exhibit A attached hereto.

All capitalized terms used herein and not otherwise defined have the respective meanings given to such terms in the Development Agreement.

Dated as of ______________, 201_.

LAKELAND COMMONS, LLC

By: ____________________________________
Name: __________________________________
Title: __________________________________

Payment Request reviewed and reimbursement of Eligible Cost recommended if required under Development Agreement:

[CONSTRUCTION CONSULTANT]

By:____________________________________
Title:___________________________________

Date: _______________________________

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