

Exhibit 3

**AGREEMENT  
BETWEEN THE CITY OF PEORIA  
AND WCT PROPERTIES, INC., AN ILLINOIS CORPORATION  
RELATING TO THE  
STERLING AVENUE/ROCKWOOD ROAD SPECIAL SERVICE AREA**

**THIS AGREEMENT** (the "Agreement") is made and entered into on, and is effective as of, the 21 day of November, 2017, by and between the City of Peoria ("City"), an Illinois home rule municipal corporation; and WCT Properties, Inc. ("WCT"), an Illinois corporation;

**WITNESSETH**

**WHEREAS**, the City has adopted an Ordinance (No. 17,520) to form a Special Service Area for the following described real estate (the "SSA Parcel"), to-wit:

A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION NINETEEN (19), TOWNSHIP NINE (9) NORTH, RANGE EIGHT (8) EAST OF THE FOURTH PRINCIPAL MERIDIAN, PEORIA COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 19; THENCE SOUTH 89°-54'-04" WEST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER (SW 1/4) , 271.95 FEET; THENCE NORTH 00°-12'-11" WEST, 326.10 FEET TO THE EAST RIGHT-OF-WAY LINE OF ROCKWOOD ROAD AND THE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED: FROM THE POINT OF BEGINNING, (THE FOLLOWING THREE COURSES ARE ALONG SAID EAST RIGHT-OF-WAY LINE), THENCE CONTINUING NORTH 00°-12'-11" WEST, 36.51 FEET; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 345.00 FEET FOR AN ARC DISTANCE OF 249.97 FEET, SAID CURVE BEING SUBTENDED BY A CHORD HAVING A BEARING OF NORTH 20°-57'-36" WEST, AND A LENGTH OF 244.54 FEET; THENCE NORTH 41°-43'-01" WEST, 49.99 FEET; THENCE SOUTH 89°-59'-00" EAST, 298.64 FEET TO THE WEST RIGHT-OF-WAY LINE OF NORTH STERLING AVENUE; (THE FOLLOWING FOUR COURSES ARE ALONG SAID WEST RIGHT-OF-WAY LINE); THENCE SOUTH 00°-26'-41" EAST, 104.52 FEET; THENCE SOUTH 03°-10'-16" EAST, 68.98 FEET; THENCE SOUTH 00°-26'-41" EAST, 78.74 FEET; THENCE SOUTH 10°-05'-51" WEST, 51.47 FEET TO THE NORTH RIGHT-OF-WAY LINE OF JAMES BAUMANN WAY; (THE FOLLOWING FOUR COURSES ARE ALONG SAID NORTH RIGHT-OF-WAY LINE OF JAMES BAUMANN WAY); THENCE IN A SOUTHWESTERLY

## Exhibit 3

DIRECTION, ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 64.80 FEET FOR AN ARC DISTANCE OF 73.12 FEET, SAID CURVE BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 47°-58'-32" WEST, AND A LENGTH OF 69.30 FEET; THENCE SOUTH 77°-12'-40" WEST, 69.96 FEET; THENCE NORTH 72°-55'-09" WEST, 32.69 FEET; THENCE NORTH 23°-29'-43" WEST, 57.77 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 1.663 ACRES, MORE OR LESS.

Parcel Identification Numbers:

1419379012  
 1419379005  
 1419379011  
 1419379008

**WHEREAS**, the Special Service Area is to be commonly known as the Sterling Avenue/Rockwood Road Special Service Area (the "SSA");

**WHEREAS**, the City has adopted an Ordinance (No. 17,521) to levy and impose an additional municipal sales tax of One Percent (1.00%) (the "SSA Supplemental Sales Tax") upon the gross receipts of and from the business of making sales of service or making retail sales of tangible personal property, other than sales of items of tangible personal property titled or registered with an agency of the government of the State of Illinois -- which SSA Supplemental Sales Tax shall be in addition to (but otherwise identical with) such tax as is imposed by the City under Articles II and III of Chapter 27 of the Code or Ordinances of the City;

**WHEREAS**, the City and WCT agree that it is in their mutual benefit, and to the benefit of any and all property owners of the SSA from time to time, to enter into this Agreement;

**WHEREAS**, the SSA Supplemental Sales Tax (and the collections therefrom) is intended to be applied upon and for Special Services within the SSA as are herein more specifically described and set forth;

**WHEREAS**, the City has the authority to set forth the terms and conditions under which tax revenues from the SSA shall be administered, paid and applied as set forth herein and to delegate unto WCT the various administrative obligations and procedures to be followed under this Agreement in connection with management and operation of the SSA;

## Exhibit 3

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the City and WCT agree as follows:

1. Uses of the Special Service Area Revenue. The parties agree that the following shall constitute Special Services for which the expenditure of funds may be made as a part of the administration by WCT of the SSA:

A. The initial development/construction (including without limitation land assemblage/acquisition therefor) within the boundaries of the SSA of a restaurant facility, commonly known as Portillo's; and/or

B. The maintenance, repair or replacement cost of any improvement as may have been constructed within properties comprising the SSA.

The payment of such costs can be by direct disbursement to third parties as may provide services and/or materials in connection with any of the foregoing; or by disbursements made as reimbursements to WCT or other third parties as may have theretofore advanced or previously paid for any such services and/or materials provided to and within the SSA. In this context, and by way of example (but not necessarily limitation), disbursements of revenues and funds of the SSA may be made for reimbursements attributable to the assemblage of properties for any such above mentioned project(s) or development(s) as long as such properties constitute an area or areas within the boundaries of the SSA, and any such disbursements may also be made for allowances or other advances to others for improvements within the SSA as long as reasonable evidence has theretofore been obtained to the effect that the costs (for which any amounts may be reimbursed) have been for completed improvements within and/or benefitting the SSA.

2. Application of SSA Supplemental Sales Tax. By the provisions of Ordinance No. 17,521 as hereinabove described, the City has newly imposed the SSA Supplemental Sales Tax, in addition to any and all other sales taxes due upon transactions occurring upon properties within the SSA. To the extent that the City collects such SSA Supplemental Sales Taxes, the City shall maintain such collected funds in a separate account (the "Sterling/Rockwood SSA Account") and apply the funds in such amount from time to time (after deduction for reasonable expenses of the City in the administration of the provisions and procedures of the SSA, which the parties agree shall be in the amount of two percent [2%] of the SSA Supplemental Sales Taxes collected) for the uses and purposes earlier described; and, consistent therewith, the City shall work with WCT and any and all other business operators that operate businesses within the SSA to establish and provide for the returns and collection procedures for the SSA Supplemental Sales Tax within the SSA. In this respect, to the extent that the Sterling/Rockwood SSA Account contains funds in excess of the foregoing City administration expenses, such excess shall be paid to WCT for its application to and upon

## Exhibit 3

payments for costs and expenses (and for the purposes relating thereto) as are hereby authorized, permitted and provided hereinabove as permitted expenditures within the SSA. In this respect, and for purposes of confirming that any such funds have been used in compliance with the foregoing, the City shall have the right to audit and review (in such fashion and to such extent as determined by the City in its reasonable discretion) the books and records of WCT as may pertain to WCT's application of funds so received from the City for such purposes. To the extent that, as a result of such review and audit, it is determined that such funds have not been so applied, WCT shall return/pay the amount of such funds misapplied to the City, which shall deposit and continue to maintain such funds in the Sterling/Rockwood SSA Account (subject to the provisions of this Agreement otherwise contained herein and to the future application from time to time of funds in such Sterling/Rockwood SSA Account as permitted and provided herein).

3. Commencement Date of Collection; Duration of SSA. The SSA Supplemental Sales Tax shall commence to be imposed and collected as of and after January 1, 2018, and extend and continue for a period of fifteen (15) years thereafter unless sooner terminated pursuant to the terms and conditions hereinafter set forth. As indicated above, the amount of the SSA Supplemental Sales Tax shall be One Percent (1.00%) of the gross receipts from retail sales made in the ordinary course of business by businesses operating from and upon properties within the SSA. Any exception to and for the current sales tax imposed by the City and any procedures relating to the manner of collection thereof as is currently provided under the City's Code shall otherwise also apply to the SSA Supplemental Sales Tax.

4. Payments for Special Services. WCT acknowledges that, in the disbursement of any funds from the Sterling/Rockwood SSA Account for work or improvements within and/or benefitting the SSA under the terms of this Agreement, it is appropriate for the City to, at its election, confirm that the disbursements are Special Services as described herein and are for work and/or improvements that shall be free and clear of claims for mechanics liens. In this context, it is agreed that, with respect to the payment by the City of any amounts for any such work and/or improvements performed as/for special services within the SSA, WCT shall obtain and provide to the City (upon the City's written request) reasonable documentation from time to time:

- (i) Describing the work for which any payment is requested from the City;
- (ii) Certifying that such work has been completed;
- (iii) Certifying that such work is free of any existing or potential claims for mechanics liens, or that the payment shall only be made as to result in the waiver or release of any such claims.

The City may, prior to any payment being made, inspect the site of such work to confirm a workmanlike and proper completion of such work for which the payment request has been made.

## Exhibit 3

In connection with the payments for Special Services for and within the SSA, the parties hereto recognize, acknowledge, confirm and agree that amounts and deposits of and for the Sterling/Rockwood SSA Account shall be separate and not comingled with any other amounts or money accounts as may be established for other purposes with and by the City.

5. Maximum Payment Amount From the Sterling/Rockwood SSA Account. The parties agree that, notwithstanding anything herein to the contrary relating to the collection and payment of funds for Special Services for or within the SSA during its term, the collective maximum of such payments shall be no greater than the lesser of: i) Six Hundred Fifty Thousand Dollars (\$650,000); or ii) that amount actually collected during the 15 year maximum duration of the SSA. Upon the disbursement of, and up to, such maximum amount by the City from the Sterling/Rockwood SSA Account, the term of the SSA shall end, and the parties shall mutually assist and cooperate with each other in taking any such actions as are required therefor and for the termination of the collection of the SSA Supplemental Sales Taxes. In this respect, the parties acknowledge and recognize that the exact point in time when the collection of the SSA Supplemental Sales Taxes shall reach such maximum amount of Six Hundred Fifty Thousand Dollars (\$650,000) cannot be precisely and accurately determined. Based upon the foregoing, the parties agree that, upon and after the collection and disbursement of Six Hundred Thousand Dollars (\$600,000), they shall mutually and in good faith estimate (based upon previous tax collection experience for this SSA) when that point in time is expected to occur and proceed appropriately to then terminate the levy and collection of the SSA Supplemental Taxes as of such date. To the extent that, under the foregoing arrangements, the actual collected SSA Supplemental Taxes exceed \$650,000, such excess shall nevertheless be paid to and for special services as are otherwise authorized hereby and the maximum payment otherwise established and set forth herein shall be increased by such excess. To the extent that, under the foregoing arrangements, the actual collected SSA Supplemental Taxes are less than \$650,000, such deficiency shall be ignored and the maximum payment otherwise established and set forth herein shall be decreased accordingly by the amount of such deficiency.

6. Sale of SSA Parcel. The parties further agree that, notwithstanding anything herein to the contrary relating to the collection and payment of funds for Special Services for or within the SSA during the term of the SSA, in the event that WCT sells (and conveys) the SSA Parcel to a third party prior to that time that the SSA would otherwise end pursuant to any of the terms and provisions set forth above, then the term of the SSA shall end, and the parties shall mutually assist and cooperate with each other in taking any such actions as are required therefor and for the termination of the collection of the SSA Supplemental Sales Taxes (with any such taxes collected through to such point in time to nevertheless, upon collection, to be paid to WCT). In connection with the above, however, the parties acknowledge that the ownership of the SSA Parcel is

## Exhibit 3

ultimately contemplated to be held by and titled in an affiliate of WCT (such affiliate being WCT Investments, LLC, an Illinois limited liability company). In this respect, WCT may convey the SSA Parcel to such affiliate and assign the rights under this Agreement to such affiliate without causing the termination of the SSA as above provided and without any consent or approval of the City needed therefor

7. Miscellaneous.

A. Use of Terms. Capitalized terms as may be set forth in this Agreement shall, unless otherwise specifically provided, have the same meanings and constructions for purposes of this Agreement as otherwise are set forth and provided in any of the above referenced Ordinances pursuant to which the SSA has been established and/or in any tax levy ordinance as has been imposed within the SSA.

B. Time of the Essence. Time shall be of the essence of each and every covenant and condition contained herein.

C. Succession. This Agreement shall inure to the benefit of and be binding upon, the successors of WCT and upon any successor corporate authorities of the City.

D. Term of Agreement. Unless earlier terminated by the mutual agreement of the parties or pursuant to the terms hereinabove set forth, this Agreement shall extend for that period of time during which the SSA is to exist and serve the properties and area for which it has been officially established by the earlier referenced Ordinance No. 17,520.

E. Severability. If any of the provisions of this Agreement or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Agreement and the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

F. Mutual Assistance. Each of the parties agrees to mutually assist and cooperate with the other in effectuating the spirit and intent hereof, and in that regard, each party agrees to execute any and all documentation and take any and all actions as may be reasonably appropriate or required in connection therewith.

G. Applicable Law; Venue; Enforcement. This Agreement and the rights of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of Illinois. Any litigation concerning

## Exhibit 3

this Agreement shall be commenced in the County of Peoria, State of Illinois. This Agreement may be enforced as provided by law, and the parties may by civil action, mandamus, injunction, or other proceeding, enforce and compel the performance of this Agreement.

H. Counterparts/Electronic Signatures. This Agreement may be executed in counterparts and, in such case, each counterpart shall serve as an original of this Agreement. Any party may execute this Agreement by the use of so called electronic signature(s) and, in such case, the process of using and affixing any such electronic signature shall serve (as and for all purposes) as though such electronic signature was an original signature of such party.

I. Default/Attorneys' Fees. In the event that either party or their successors should find it necessary to retain an attorney for the enforcement of any provisions hereunder occasioned by the default of the other party, the party not in default shall be entitled to recover reasonable attorneys' fees and court costs incurred whether the attorneys' fees are incurred for the purpose of negotiations, trial, appellate or other services.

J. Notices. Except as otherwise provided herein, all demands, notices, or objections permitted or required to be given or served under this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered in person, sent by confirmed telefax, or deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return/receipt requested, to the addresses specified below.

City: City of Peoria  
Attn: City Clerk  
419 Fulton Street  
Peoria, IL 61602  
Telecopy #: (309) 685-8174

With copy to: City of Peoria  
Legal Department  
419 Fulton Street  
Peoria, IL 61602  
Telecopy #: (309) 494-8559

WCT: WCT Properties, Inc.  
Attn: William Torchia  
2813 N. Main Street  
East Peoria, IL 61611

## Exhibit 3

Telecopy #:

With copy to:

Robert C. Hall  
Miller, Hall & Triggs, LLC  
416 Main Street, Suite 1125  
Peoria, IL 61602  
Telecopy #: (309) 671-9616;

provided that each party may change the addresses, etc. applicable above with respect to such notices by the providing of notice thereof (in compliance with the above).

K. Relationship of Parties. The provisions and conditions of this Agreement are in no way intended to establish a relationship of a joint venture between the parties or a relationship of principal/agent of either party with respect to the other. Pursuant to this Agreement, WCT (as an independent contractor for the City) is serving at the direction and behest of the City in the City's responsibility imposed by law for the administration of the Sterling/Rockwood SSA.

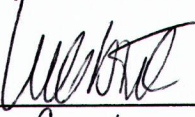
In addition, by the execution of this Agreement, the parties specially declare that they are NOT intending to bestow upon any other person any third party beneficiary relationship or the ability of any other person to enforce the provisions hereof (except for the parties hereto) as the same pertain to the use of any particular portion of funds collected or available and permitted for disbursement under the terms hereof from the Sterling/Rockwood SSA Account; nor are the parties intending to bestow upon any third party that is not a party to this Agreement any other rights, benefits or privileges hereunder except as specifically provided herein.




Exhibit 3

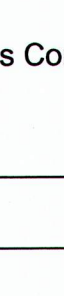
**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

WCT Properties, Inc, an Illinois Corporation

By: 

Its: 

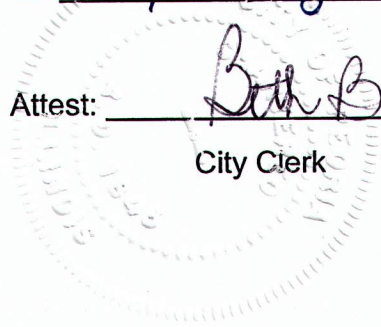
City of Peoria, an Illinois Municipal Corporation

By: 

Its: City Manager

Attest: 

City Clerk



Approved as to Form:

By: 

Legal Department