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**INFRASTRUCTURE, DEVELOPMENT AND INDEMNITY AGREEMENT**

Between

**CITY OF OVERLAND PARK, KANSAS**

And

**OAK PARK MALL, LLC.**

Dated as of June 1, 2008

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**INFRASTRUCTURE, DEVELOPMENT  
AND INDEMNITY AGREEMENT**

**THIS INFRASTRUCTURE, DEVELOPMENT AND INDEMNITY AGREEMENT**

(this “**Agreement**”), is made as of the 1<sup>st</sup> day of June, 2008, by and between the CITY OF OVERLAND PARK, KANSAS, a municipal corporation organized and existing under the Constitution and laws of the State of Kansas, having its principal offices at its City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212 (the “**City**”), and OAK PARK MALL, LLC., a Delaware limited liability company, having its principal office at CBL Center, Suite 500, 2030 Hamilton Place Boulevard, Chattanooga, Tennessee 37421-6000 (the “**Owner**”).

**W I T N E S S E T H:**

**WHEREAS**, Owner owns the “Oak Park Mall” (“**Mall**”) in the City, which is a retail shopping facility of the highest quality and a valuable asset to the City; and

**WHEREAS**, the Mall, due its age, requires substantial infrastructure upgrades and replacements, as well as interior renovation and modernization, all of which could take many years to complete; and

**WHEREAS**, to enable the Owner to complete the aforesaid improvements on a more expedited basis, Owner has requested that a Transportation Development District (the “**Transportation Development District**”) be formed by the City to allow a sales tax to be imposed to defray statutorily eligible transportation related improvement costs; and

**WHEREAS**, the City Council of the City adopted Resolution No. 3620 (the “**Resolution**”) establishing a Transportation Development District to provide project improvements to said Transportation Development District pursuant to the provisions of K.S.A. 12-17,140 through 12-17,149, et seq. (collectively, the “**Act**”); and

**WHEREAS**, all of the property within the Transportation Development District (the “**Development Site**”) is owned by the Owner and is and may be leased under long-term ground leases for the purpose of operating and maintaining a retail shopping district, which includes the Mall (the “**Development**”); and

**WHEREAS**, the Owner has contracted with others to provide development services and represent the Owner in the improvement of the Development; and

**WHEREAS**, pursuant to the Resolution a transportation development district project as more particularly described in the Resolution to be constructed and installed within the Development Site and the Transportation Development District (the “**Project**” or “**TDD Project**”) will be financed with special obligation bonds (the “**Bonds**”), in the maximum principal amount of \$19,300,000; and

**WHEREAS**, the Owner has represented to the City that the improvements to be undertaken in the Project, as set forth in the petition to establish the Transportation Development District, could not be timely completed without the Bonds and the proceeds therefrom; and

**WHEREAS**, the Bonds are payable from moneys received from a retail sales tax imposed in accordance with the Act within the Transportation Development District; and

**WHEREAS**, the proceeds of the Bonds will be deposited in a project fund (the “**Project Fund**”) created under and pursuant to a Trust Indenture (the “**Trust Indenture**”) between the City and Wells Fargo Bank, N.A., as Trustee (the “**Trustee**”), and will be applied to the Eligible Project Costs in accordance with the terms of the Trust Indenture; and

**WHEREAS**, in consideration for the issuance of the Bonds, the Owner has agreed to maintain in a good and workmanlike manner and in accordance with all pertinent

ordinances and regulations of the City the Project upon the terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

## **ARTICLE I**

### **DEFINITIONS**

The terms defined in this Article shall, for all purposes of this Agreement, have the meanings specified in this Article, unless the context clearly otherwise requires.

“**Act**” shall have the meaning assigned such term in the preambles hereof.

“**Administrative Expenses**” shall mean the reasonable expenses incurred by the City pursuant to this Agreement or resulting from the issuance of the Bonds, not to exceed \_\_\_\_\_ percent (\_\_\_%) of the Eligible Project Costs.

“**Agreement**” or “**this Agreement**” shall mean this Infrastructure, Development and Indemnity Agreement, as originally executed and as it may hereafter be amended and supplemented in accordance with the provisions hereof.

“**Bond**” or “**Bonds**” shall mean the City’s Transportation Development District Retail Sales Tax Bonds (Oak Park Mall Project) in the maximum principal amount of \$19,300,000.

“**City**” shall mean the City of Overland Park, Kansas, a municipal corporation organized and existing under the Constitution and laws of the State.

“**Closing Date**” shall mean the date of initial delivery of the Bonds.

**“Cost”** or **“Cost of the Project”** or **“Costs of the Project”** with respect to the Project shall, to the extent permitted by the Act (as from time to time amended), be deemed to include the following:

All costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings, necessary fees and expenses of consultants, interest accrued on borrowed money during the period of construction and the amount of a reserve fund for the Bonds, together with the cost of land, materials, labor and other lawful expenses incurred in planning and doing the Project and may include a charge of not to exceed 5% of the total cost of the Project or the cost of work done by the City to reimburse the City for the services rendered by the City in the administration and supervision of such Project by its general officers.

**“Development”** shall mean the retail shopping district located on the Development Site.

**“Development Site”** shall mean all of the land within the Transportation Development District.

**“Eligible Project Costs”** shall mean all Costs of the Project that are eligible for financing under the Act.

**“Event(s) of Default”** shall have the meaning given in Article VI hereof.

**“Lender”** shall mean LaSalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities II, Inc., Commercial Mortgage Pass-Through Certificates, 2005-PWR10, its successors and/or assigns.

**“Mortgage Loan”** shall mean that certain mortgage loan in the original principal amount of \$275,700,000 made by Lender’s predecessor in interest to Owner which is secured in part by the Security Instrument.

**“Mall”** shall have the meaning assigned such term in the preambles hereof.

**“Owner”** shall mean Oak Park Mall, LLC., a Delaware limited liability company, or any successor thereto.

**“Project”** or **“TDD Project”** shall mean the construction of public and private improvements in the District, as more particularly described in Resolution No. 3620 (the **“Resolution”**) adopted by the Governing Body of the City of Overland Park, Kansas on September 17, 2007, as the same may at any time and from time to time exist, including any modifications, substitutions and additions and excluding deletions.

**“Project Fund”** shall mean that certain project fund created pursuant to the Trust Indenture.

**“Security Instrument”** shall mean that certain Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of November 15, 2005, executed by Owner to Mortgage Electronic Registration Systems, Inc., a Delaware corporation, as mortgagee and nominee of Lender, encumbering the Mall, as the same may be amended, modified or replaced.

**“State”** shall mean the State of Kansas.

**“Transportation Development District”** shall mean the Transportation Development District established by the City by the Resolution.

**“Trustee”** shall mean Wells Fargo Bank, N.A.



**“Trust Indenture”** shall mean that certain Trust Indenture dated as of June 1, 2008 by and between the City, Owner and the Trustee.

## ARTICLE II

### **REPRESENTATIONS**

**SECTION 2.01. The City.** The City makes the following representations and covenants as the basis for the undertakings on the part of the Owner contained in this Agreement:

(a) The City is a municipal corporation organized and existing under the Constitution and laws of the State and has the corporate power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The City will issue its Bonds in the aggregate principal amount of \$19,300,000, subject to the ability to market said Bonds, to finance the TDD Project, upon the terms and conditions set forth in the Ordinance and will cause the proceeds of the sale of the Bonds to be applied to the Costs of the TDD Project.

(c) The execution and delivery of this Agreement by the City has been duly authorized by all necessary action on its part.

**SECTION 2.02. The Owner.** The Owner makes the following representations and covenants as the basis for the undertakings on the part of the City herein contained:

(a) The Owner is a limited liability company duly organized under the laws of the State of Delaware, is duly authorized to do business in the State, has power to enter into this Agreement and by proper action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Owner is a party or by which it is bound, or will constitute a default under any of the foregoing.

(c) So long as any of the Bonds shall be outstanding, the Owner will not willfully take any action, or willfully fail to take any action, that (i) would cause the Project to be ineligible for financing under the Act, or (ii) adversely affect the tax exempt status of the interest payable on the Bonds.

### **ARTICLE III**

#### **AGREEMENTS WITH RESPECT TO THE CONSTRUCTION, EQUIPPING AND INSTALLATION OF THE PROJECT**

##### **SECTION 3.01. Construction, Equipping and Installation of the Project.**

(a) The Owner shall have the sole responsibility for the construction, installation and equipping of the Project and may perform the same itself, through agents, contractors and others selected by the Owner, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the acquisition, construction, installation and equipping of the Project, subject to compliance with applicable City planning, zoning and other applicable ordinances and resolutions. The Owner shall have full authority and the sole right under this Agreement to supervise and control directly or indirectly all aspects of the construction, installation and equipping of the Project, subject to compliance with applicable

City planning, zoning and other applicable ordinances and resolutions. The construction schedule for the Project is attached hereto as Exhibit "A".

(b) In the event the moneys in the Project Fund available for payment of the Eligible Project Costs should not be sufficient to pay the Cost of the Project in full, the Owner agrees to complete such part of the Project and to pay that portion of the Cost of the Project in excess of the moneys available therefor in the Project Fund. The Owner agrees that if after exhaustion of the moneys in the Project Fund, the Owner should pay any portion of the Cost of the Project pursuant to the provisions of this Section 3.01, and the Owner shall not be entitled to any reimbursement therefor from the City.

(c) Requests for disbursements of Bond proceeds from the Trustee shall subject to the terms of the Indenture.

(d) The Owner will use all reasonable efforts to cause the Project to be completed on or before three (3) years from the date of issuance of the Bonds or as soon thereafter as may be practicable.

#### **ARTICLE IV**

##### **PROVISIONS CONCERNING PAYMENT, MAINTENANCE AND USE OF THE PROJECT**

**SECTION 4.01. Administrative Expenses.** The Owner will pay all Administrative Expenses. In the event the Owner should fail to make any such payment, the payment so in default shall continue as an obligation of the Owner until the amount in default shall have been fully paid, and the Owner agrees to pay the same with interest thereon until paid at the same rate as the interest on the Bonds.

**SECTION 4.02. No Warranty of Project.** The City makes no warranty, either express or implied, as to the actual or designed capacity of the Project, as to the suitability of the Project for the purposes specified in this Agreement, as to the condition of the Project, or that the Project will be suitable for the Owner's purposes or needs.

**SECTION 4.03. Further Assurances and Corrective Instruments.** The City and the Owner will execute and deliver such amendments of or supplements to this Agreement and any such further instruments as may be necessary for the purposes of correcting any inadequate or incorrect description of the Project or carrying out the intention or facilitating the performance of this Agreement.

**SECTION 4.04. Maintenance of Project by Owner.** The Owner agrees that it will, at its own expense, maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that it will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals; provided, however, that the Owner shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary portion of the Project. In any instance where the Owner determines that all or any portion of the Project has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Owner may remove all or such portion of the Project and sell, trade-in, exchange or otherwise dispose of the Project or such removed portion without (except to the extent provided in this Section) any responsibility or accountability to the City therefor.

**SECTION 4.05. Insurance Required.**

(a) The Owner agrees that until the Project is completed, it will, at its own expense, maintain insurance coverage of the types and minimum liability as set forth below. The Owner shall furnish to the City a Certificate of Insurance verifying such coverage. Prior to any material change or cancellation, the City will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

(1) **Builder's Risk** insurance during the period of construction of the Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by the Owner shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as customarily provided. The property insurance shall include physical loss or damage to the work, including materials and equipment in transit, at the Site.

(2) **Commercial Property** insurance for all properties substantially completed, covering all risks of direct physical loss. Such insurance shall be in an amount equal to 100% of the replacement cost value of the property and shall include either an agreed amount endorsement of waiver of coinsurance.

(3) **Commercial General Liability** insurance on an occurrence basis in amounts no less than \$1,000,000 bodily injury and property damage per occurrence, including personal and advertising injury; \$1,000,000 general aggregate.

(4) **Workers' Compensation and Employers' Liability**, protecting against all claims under applicable Kansas Workers' Compensation laws. The Owner shall also be

protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than Statutory (Workers' Compensation); \$100,000 / \$500,000 / \$100,000 (Employers Liability).

(b) **Industry Ratings.** Insurance carriers must attain a Best's policyholder rating of A-VIII or better; or is a company mutually agreed upon by the City and the Owner.

**SECTION 4.06. Taxes and Other Governmental Charges and Utility Charges.** Except as hereinafter provided, the Owner agrees to pay, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any property installed by the Owner therein or thereon, all utility or other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements.

The Owner may, at its expense and in its own name and behalf in good faith contest any such taxes, assessments and other charges.

**SECTION 4.07. Inspection of the Project.** The Owner agrees that the City and its duly authorized agents shall have the right at all reasonable times to enter, examine and inspect the Project.

**SECTION 4.08. City Legal Expenses.** The Owner shall pay the legal fees and expenses of the City's Bond Counsel, Kutak Rock LLP, from Bond proceeds.

## ARTICLE V

### **ASSIGNMENT; INDEMNIFICATION**

**SECTION 5.01. Assignment.** This Agreement may be assigned by the Owner with the consent of the City, which consent shall not be unreasonably withheld, subject, however, to the following conditions:

(a) No assignment shall relieve the Owner from primary liability for any of its obligations hereunder, and in the event of any such assignment the Owner shall continue to remain primarily liable for payment of the amounts specified in this Agreement and for performance and observance of the other agreements to be performed and observed by it hereunder to the same extent as though no assignment had been made; and

(b) The Owner shall, within thirty (30) days after the delivery of each such assignment, furnish or cause to be furnished to the City a true and complete copy thereof.

The City hereby grants its consent to the assignment by Owner, pursuant to the Security Instrument, of all of Owner's rights, title and interest in and to this Agreement to the Lender as security for the Mortgage Loan.

**SECTION 5.02. Release and Indemnification Covenants.** The Owner releases the City and each officer or employee of the City from, and covenants and agrees that neither the City nor any officer or employee of the City shall be liable for, and agrees to indemnify and hold the City and each officer or employee of the City harmless against, claims against the City or any such officer or employee of the City, including for any loss or damage to property or any injury to or death of any person, caused by or resulting from any defect in the Project or City involvement in the Project other than such as are caused by the gross negligence or willful misconduct of the City or any of their officers or employees. In case any action shall

be brought against the City or any of their officers or employees in respect of which indemnity may be sought against the Owner, the party seeking indemnification shall promptly notify the Owner in writing and the Owner shall assume the defense thereof, including the employment of counsel and the payment of all expenses. The City or any of their officers or employees who are defendants shall have the right to employ separate counsel in any such action, at the cost of Owner, and participate in the defense thereof. The Owner shall not be liable for any settlement of any such action without its consent, or for any judgment for the plaintiff in any such action if the party to be indemnified shall have failed to perform its obligations under this Section.

Further, the Owner agrees to reimburse the expenses incurred by the City in the performance of its obligations under this Agreement not otherwise provided for under the terms of this Agreement and not being performed on behalf of the City by the Owner.

**SECTION 5.03. Assignment of Interest in this Agreement by the City.**

The City agrees that it shall make no assignment or pledge of any interest in this Agreement and shall be bound by any decision by the Owner to redeem the Bonds pursuant to the terms of the Indenture. Upon full payment of the Bonds and performance of this Agreement, City shall cause the \$.005 sales tax collected in connection with the District to be discontinued.

**ARTICLE VI**

**EVENTS OF DEFAULT AND REMEDIES**

**SECTION 6.01. Events of Default Defined.** Any one or more of the following shall be “**Events of Default**” under this Agreement:

(a) Failure by the Owner to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder for a period of sixty (60) days after written notice, specifying such failure, requesting that it be remedied, and stating that it is a



notice of default, has been given to the Owner by the City; provided, however, that, if said default is such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Owner within the applicable period and diligently pursued until the default is corrected; or

(b) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Owner a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Owner under the federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Owner or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(c) The institution by the Owner of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of the Owner or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Owner in furtherance of any such action.

The foregoing provisions of subsection (a) of this Section are subject to the following limitations: If by reason of “**force majeure**” the Owner is unable in whole or in part to

carry out the obligations on its part contained in this Agreement, the Owner shall not be deemed in default during the continuance of such inability. The term “**force majeure**” as used in this Agreement shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders, restraints of any kind, action or inaction of the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission lines, pipes or canals; material shortages; delays in transit; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Owner. The Owner agrees, however, to use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Owner from carrying out this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Owner, and the Owner shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Owner unfavorable to the Owner, and provided that the resolution of any disputes with governmental or regulatory authorities with respect to orders, conditions, restraints, regulations or other actions shall be entirely within the discretion of the Owner, and the Owner shall not be required to accede to any such actions when such course is in the judgment of the Owner unfavorable to it.

**SECTION 6.02. Remedies on Default.** Whenever an Event of Default shall have happened and be continuing, the City may take whatever action at law or in equity which may appear necessary or desirable to enforce performance and observance of any obligation,

agreement or covenant of the Owner under this Agreement; provided, however, that the City shall have no right to seek or obtain a lien on the Mall or on any other property of Owner which is encumbered by the Security Instrument.

**SECTION 6.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. To the extent permitted by law, 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 thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any such waiver shall be in writing and signed by the party against whom it is to operate. In order to entitle the City to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Agreement.

**SECTION 6.04. Attorneys' Fees and Expenses.** In the event the Owner should default under any of the provisions of this Agreement and the City should employ counsel or incur other reasonable expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Owner herein contained, the Owner will on demand therefor pay to the City the reasonable fees and disbursements of such counsel and such other reasonable expenses so incurred by the City.

**SECTION 6.05. No Additional Waiver Implied by One Waiver.** In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### **LENDER PROTECTION PROVISIONS**

**SECTION 7.01. Right to Perform for Owner; Right to Cure.** City acknowledges and agrees that Lender shall have the right to perform any term, covenant, condition or agreement to be performed by Owner under this Agreement and City shall accept such performance by Lender with the same force and effect as if furnished by Owner. In the event of a monetary default by Owner under this Agreement and prior to any termination of this Agreement by City, City acknowledges and agrees that City shall provide Lender with notice of the same and Lender shall have the right (but not the obligation) to remedy such monetary default by paying any past due amounts under this Agreement within the same period of time as Owner has under this Agreement, plus an additional sixty (60) days. In the event of a non-monetary default by Owner hereunder and prior to any termination of this Agreement by City, City acknowledges and agrees that City shall provide Lender with notice of the same and Lender shall have the right (but not the obligation) to remedy or cause to be remedied any such non-monetary default within the same period of time as Owner has under this Agreement, plus such additional time as Lender reasonably requires to remedy or cause to be remedied such non-monetary default. City agrees that City shall not terminate this Agreement in connection with any such non-monetary default which Lender has elected to remedy or cause to be remedied so long as Lender attempts to remedy such default with diligence toward completion.

**SECTION 7.02. Lender's Consent.** Neither City nor Owner will amend, modify, cancel or surrender this Agreement without Lender's prior written consent.

**SECTION 7.03. Delivery of Notices.** City shall simultaneously deliver to Lender copies of all notices, statements, information and communications delivered or required

to be delivered to Owner pursuant to this Agreement, including, without limitation, any notice of any default by Owner. In addition, City shall promptly notify Lender in writing of any failure by Owner to perform any of Owner's obligations under this Agreement. No notice, statement, information or communication given by City to Owner shall be binding or affect Lender unless a copy of the same shall have simultaneously been delivered to Lender. All notices to Lender shall be addressed as follows: LaSalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities II, Inc., Commercial Mortgage Pass-Through Certificates, 2005-PWR10, c/o Wells Fargo Bank, National Association, 1320 Willow Pass Road, Suite 300 Concord, CA 94520, or at such other address as Lender shall provide in writing to the other parties hereto, and shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered (as evidenced by the receipt) or the first attempted delivery on a business day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a business day.

**SECTION 7.04. Lender Not Obligated Under Agreement; Permitted**

**Transfers.** The Security Instrument shall not be deemed to constitute an assumption of this Agreement by Lender, nor shall Lender, as such, be deemed to be an assignee or transferee of this Agreement so as to require Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Owner to be performed thereunder. Notwithstanding the foregoing, the purchaser at any sale of the Mall (whether Lender or any third party) in any

proceedings for the foreclosure of the Security Instrument (including, without limitation, by exercise of the power of sale or obtaining a deed in lieu of foreclosure) shall be deemed to be a permitted assignee or transferee of Owner under this Agreement without the need to obtain City's consent, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Owner to be performed under this Agreement from and after the date of such purchase and/or assignment (but not for any obligations or liabilities accruing prior to such date), but only for so long as such purchaser or assignee is the owner of the Mall, it being understood and agreed that upon a sale or transfer of the Mall by such party (which sale or transfer shall not require the consent of City) and written assumption of its obligations under this Agreement by any new purchaser or assignee, the transferring party shall be relieved of all future liability under this Agreement.

**SECTION 7.05. New Agreement.** If this Agreement is canceled or terminated for any reason, City hereby agrees that City shall, upon Lender's written election, promptly enter in a new, direct agreement with Lender (or its nominee or any other party which Lender may designate, including without limitation, Owner) with respect to the TDD Project on the same terms and conditions as this Agreement, it being the intention of the parties to preserve this Agreement for the benefit of Lender without interruption.

**SECTION 7.06. Lender is Third Party Beneficiary.** City and Owner hereby recognize Lender as a third party beneficiary of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**SECTION 8.01. Term of This Agreement.** This Agreement shall become effective upon the issuance of the Bonds and shall remain in full force and effect from the date

hereof until the Bonds have been fully paid. The provisions of Article V hereof in respect of indemnification by the Owner to the City shall include claims occurring prior to such transfer.

**SECTION 8.02.      Notices.** All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or sent by telecopier followed by first class mail, addressed as follows: If to the City: City of Overland Park, Kansas, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212; Attention: Kristy Cannon Stallings, Deputy City Manager; and if to the Owner: CBL Center, Suite 500, 2030 Hamilton Place Boulevard, Chattanooga, Tennessee 37421-6000, Attention: General Counsel, and to Lathrop & Gage LC, 10851 Mastin Boulevard, Suite 1000, Overland Park, Kansas 66210, Attention: Lewis A. Heaven, Jr. The City and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**SECTION 8.03.      Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and the Owner and their respective successors and assigns, subject, however, to the limitations contained in Sections 5.01 and 5.03 hereof. No provision hereof shall, however, be construed to impose any personal or pecuniary liability upon the City or any officer or employee of the City. No party shall have any obligation under this Agreement unless and until the Bonds shall have been issued and delivered by the City pursuant to the terms of the Ordinance.

**SECTION 8.04.      Severability.** In the event 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.

**SECTION 8.05. Amendments.** This Agreement may only be amended with the written consent of the parties hereto.

**SECTION 8.06. Execution in Counterparts.** This 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 8.07. Governing Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State.

**SECTION 8.08. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**SECTION 8.09. Filing.** A memorandum of this Agreement shall be recorded in the land records of Johnson County, Kansas, currently the Johnson County, Kansas Department of Records and Tax Administration, and shall constitute a covenant running with the land, and shall be binding on the Owner, its assigns and other successors in interest.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**IN WITNESS WHEREOF**, the City and the Owner have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

**CITY OF OVERLAND PARK, KANSAS**

By: \_\_\_\_\_  
Carl Gerlach, City Mayor

**ATTEST:**

By: \_\_\_\_\_  
Marian Cook, City Clerk

**[CITY SEAL]**

**OAK PARK MALL, LLC**

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

Exhibit "A"  
(Project Schedule)

Oak Park Mall Expansion:

Start site work	01/07/08
Demo and Abatement	01/07/08 - 01/15/08
Utilities/Infrastructure	01/07/08 - 03/07/08
Site Work/Grading	03/07/08 - 05/01/08
Lighting	04/01/08 - 04/15/08
Asphalt Paving	04/01/08 - 06/15/08
Hardscape/Landscape	04/15/08 - 06/31/08
Site work complete	07/01/08

Oak Park Mall Renovation:

Start site work	01/15/09
Demo and Abatement	01/15/09 - 03/31/09
Utilities/Infrastructure	01/31/09 - 04/31/09
Site Work/Grading	01/31/09 - 05/31/09
Lighting	04/01/09 - 07/31/09
Asphalt Paving	04/01/09 - 08/31/09
Hardscape/Landscape	09/01/09 - 10/31/09
Site work complete	11/01/09

Oak Park Plaza (tentative schedule based on current information and subject to change):

Start site work	10/01/08
Demo and Abatement	10/01/08 - 10/31/08
Utilities/Infrastructure	11/01/08 - 01/31/09
Site Work/Grading	11/01/08 - 01/31/09
Lighting	02/01/09 - 03/31/09
Asphalt Paving	03/01/09 - 04/31/09
Hardscape/Landscape	03/01/09 - 04/31/09
Site work complete	05/01/09