

## **FUNDING AGREEMENT**

THIS FUNDING AGREEMENT (the "Agreement") is entered into this December \_\_\_\_, 2008, between Village of St. Andrews, L.L.C. (the "Applicant"), and the City of Overland Park, Kansas (the "City").

### **RECITALS**

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by K.S.A. 12-17,140 *et seq.*, as amended (the "Transportation Development District Act"), to provide financing for certain qualified projects upon compliance with the procedures set forth in the Transportation Development District Act.
- B. The Applicant is a Kansas limited liability company.
- C. The Applicant has requested that the City consider the establishment of a Transportation Development District and authorize the construction of the transportation development district project improvements (the "Project") to be funded by special assessment bonds that will be secured by the monies received from special assessments levied upon real property situated within the District. In order to do so, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, and the City requires that the Applicant pay and reimburse the City for the payment of such reasonably incurred costs.

**NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:**

**1. Services to be Performed by the City.**

The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which are reasonably necessary to:

(a) Consider the establishment of a Transportation Development District in accordance with the provisions of the Transportation Development District Act, give all notices, make all publications, prepare any studies and analyses necessary or appropriate in connection with the establishment of the Transportation Development District as required by the Transportation Development District Act and prepare the required resolutions and ordinances to consider the establishment of the Transportation Development District.

(b) If the City Council establishes the Transportation Development District, make all publications, prepare any other studies and analyses necessary or appropriate in connection with levying the assessments on the property, hold all hearings as required by the Transportation Development District Act regarding same

and prepare the required resolutions and ordinances to levy the assessments on the property.

(c) Prepare and negotiate a development agreement, between the parties for the construction of the Project in compliance with the Transportation Development District Act.

(d) If a definitive agreement is entered into administer the agreement until terminated or completed.

## 2. **Payment of City's Fees and Expenses.**

The Applicant shall pay the City for its fees and expenses as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in **Section 1** (the "Charges"), subject to the following conditions:

(a) In order to insure the prompt and timely payment of the Charges, the Applicant shall establish a fund (the "Fund") by paying the initial amount of Five Thousand and 00/100 Dollars (\$5,000.00) to the City prior to the publication of the transportation development district ordinance pertaining to the project (Ordinance No. TDD-2789). Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Applicant on a monthly basis. If, in the judgment of the City, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City is required to provide sufficient funds to pay the projected Charges.

(b) If the amount in the Fund is insufficient to pay the outstanding charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the amount required to pay such Charges.

(c) All statements shall be reasonably itemized and shall be payable within thirty (30) days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(d) The City's Bond Counsel, Kutak Rock LLP, shall be paid at its standard rate on an hourly basis for legal services rendered in support of the services performed by the City hereunder.

(e) The Applicant will not be billed for the time of the City's administrative and professional staff under this Agreement. If the Transportation Development District is established, those costs may be included in City expenses, the payment and reimbursement of which will be provided for in a separate agreement between the parties.

(f) If the Transportation Development District is established, all payments made hereunder are eligible costs under the Transportation Development District Act and as such are reimbursable from the proceeds of special obligation bonds subject, however, to any provisions of the Transportation Development District Act to the contrary.

**3. Termination.**

(a) The City may terminate this Agreement upon ten (10) days' written notice in the event the Applicant fails to make any payments when due.

(b) The Applicant may terminate this Agreement in the event it determines not to proceed further with the Project upon written notice to the City thereof.

(c) If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within thirty (30) days of such termination. In the event the balance of the Fund, if any, is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the balance required to pay such Charges.

**4. No Obligation to Proceed with Transportation Development District.**

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish a Transportation Development District or to approve any transportation-related project and the approval of a Transportation Development District is subject to the sole discretion of the Governing Body of the City and the requirements of the Transportation Development District Act.

**5. Notice.**

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Kristy Stallings, Deputy City Manager  
Overland Park, Kansas  
City Hall  
8500 Santa Fe  
Overland Park, Kansas 66212

With a copy to:

Janet Garms  
Kutak Rock LLP  
1010 Grand Boulevard  
Suite 500  
Kansas City, Missouri 64106-2220

To the Applicant:

Village of St. Andrews, L.L.C.  
Attention: Daniel Barnard  
1551 Wall Street, Suite 220  
St. Charles, Missouri 63303

With a copy to:

Korb W. Maxwell  
Polsinelli, Shughart  
6201 College Blvd., Suite 500  
Overland Park, Kansas 66211-2423

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days' prior written notice thereof.

**6. Governing Law.**

This Agreement shall be construed in accordance with the laws of the state of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

Village of St. Andrews, L.L.C.

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

CITY OF OVERLAND PARK, KANSAS

By: \_\_\_\_\_  
Carl Gerlach  
Mayor

(SEAL)

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Tammy M. Owens  
Senior Assistant City Attorney