

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into this ____ day of _____, 2010, by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (“City”); and **SHOPPES AT DEER CREEK WOODS II, L.L.C.**, a Kansas limited liability company, (the “Developer”).

A. The City has authority to create a transportation development district (“TDD”), pursuant to K.S.A. 12-17,140 through 12-17,149, and amendments thereto (the “TDD Act”), for the purpose of financing transportation related projects. Under the TDD Act, the owners of all land within the proposed TDD boundaries may petition the City to request the creation of a TDD and to impose special assessments or transportation development district sales taxes (the “TDD Sales Tax”) to pay the cost of a transportation development project and/or to repay special obligation bonds issued by the City to finance such projects.

B. The Developer is the owner or developer of certain land in the City located at the Northwest corner of 135th and Metcalf, commonly referred to as Deer Creek Woods Shopping Center (the “Development”).

C. On May 21, 2007, the Developer, along with all other property owners within the Development, submitted a petition (the “Petition”) to the City requesting the formation of a TDD (the “Deer Creek TDD”). A copy of the Petition is attached hereto as **Exhibit A**. A legal description of the boundaries of the Deer Creek TDD is set forth on **Exhibit B** attached hereto.

D. On August 6, 2007, the City approved the creation of the Deer Creek TDD through the adoption of Resolution No. 3616 (the “TDD Resolution”). As was contemplated in the Petition, the TDD Resolution approved certain transportation related projects within the Deer Creek TDD, as more particularly described on **Exhibit C** attached hereto (the “TDD Improvements”) to be financed with TDD Sales Tax revenues received from the imposition of a TDD Sales Tax. The TDD Sales Tax commenced on January 1, 2008.

E. The parties now desire to enter into this Agreement to formalize the construction and financing of the TDD Improvements and the procedures for and certification payment of the costs of the TDD Improvements.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS AND RULES OF CONSTRUCTION**

A. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. “Agreement” means this Agreement as may be amended in accordance with the terms hereof.
2. “City” means the City of Overland Park, Kansas.
3. “City Expenses” means the expenses of the City for administrative, financial and legal services incurred in connection with the TDD Improvements.
4. “City Representative” means the City Manager and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed on behalf of the City.
5. “City TDD Annual Administrative Fee” means an amount equal to the greater of \$5,000 or 1% of the TDD Sales Tax collected for the preceding calendar year.
6. “Developer” means SHOPPES AT DEER CREEK WOODS II, L.L.C., and its successors and assigns.
7. “Eligible Expenses” means expenses related to the Project to the extent such expenses are “costs” or a “project” as defined in the TDD Act. The maximum amount of Eligible Expenses is Eight Million Dollars (\$8,000,000).
8. “Event of Default” means any event or occurrence as defined in Article VI of this Agreement.
9. “Existing Deposit” means the TDD Sales Tax deposited with the City and being held in the TDD Sales Tax Fund as of the date hereof.
10. “Net TDD Bond Proceeds” means the proceeds from the sale of the TDD Bonds available to finance the TDD Improvements.
11. “Parties” means the City and the Developer.
12. “Project” means the improvements described in the Revised Preliminary Development Plan, and Final Development Plan, approved by the City as such plans might be modified or revised in accordance with the Unified Development Ordinance of the City of Overland Park.
13. “State” means the State of Kansas.
14. “TDD Bond Documents” means the bond indentures, the official statements, the bond ordinances, the arbitrage letters of instructions and other documents evidencing the sale and issuance of the TDD Bonds.
15. “TDD Bond Fund” means the fund, if any, within the TDD Sales Tax Fund established under the TDD Bond Documents to provide for the payment of the principal of and interest on the TDD Bonds.

16. “TDD Bonds” means transportation development district bonds issued by the City to finance all or a portion of the TDD Projects.

17. “TDD Sales Tax Fund” means the separate fund established by the City for deposit of the TDD Sales Tax received from the State collected within the Deer Creek TDD, and that is used to finance the TDD Improvements pursuant to the TDD Act.

18. “Term” means from the date of execution of the Agreement to the later of the date of issuance and delivery of the TDD Bonds or the reimbursement in full of the cost of the TDD Improvements.

19. “Underwriter” means the underwriter or original purchaser of or placement agent for the TDD Bonds selected by the City in consultation with the Developer.

B. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

1. The terms defined in this Article include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.

3. All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

5. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II

DEVELOPMENT OF THE PROJECT

A. Completion of the TDD Improvements. The Developer shall complete the TDD Improvements in conformance with the Revised Preliminary Development Plan, Final Development Plan, related stipulations, City building codes, City Ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain any and all

permits, which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

B. Cost of the Project. Developer shall be responsible for and will bear all costs of the Project, including the TDD Improvements, subject to the terms of this Agreement. The total estimated costs of the TDD Improvements are set forth in Exhibit C.

C. Indemnification. The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees relating to the Project and the activities of the Developer and its contractors, subcontractors, agents and employees under this Agreement, including, but not limited to, claims for loss or damage to any property or injury to or death of any person, asserted by or on behalf of any person, firm, corporation or governmental authority arising out of or in any way connected with any property of the Developer, or the conditions, occupancy, use, possession, conduct or management of, or any work done in or about the Project by the Developer or its agents. Nothing in this Section shall be deemed to impose liability on the Developer to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of the loss. The Developer shall give the City immediate written notice of any claim, suit or demand which may be subject to this Section.

D. Insurance.

1. Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the Term and during all phases of the Development, maintain or cause to be maintained insurance with respect to the Project covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations, similar development projects (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in such amounts as, in the commercially reasonable judgment of the Developer are adequate to protect the Developer and the Project. Throughout the Term, the Developer agrees to provide the City upon request an Evidence of Property Insurance and Certificate of Liability Insurance listing all coverages applicable to the Project.

2. The Developer shall require of the Contractor hired to perform work on any public infrastructure the following insurance requirements:

(a) General: The Contractor shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

(b) Notice of Claim Reduction of Policy Limits: The Contractor, upon receipt of notice of any claim in connection with the Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Developer shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

(c) General Liability:

Limits –

General Aggregate:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- (1) Commercial General Form
- (2) Explosion, Collapse & Underground
- (3) Broad Form Contractual / Contractually Assumed Liability
- (4) Independent Contractors
- (5) Broad Form Property Damage
- (6) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- (7) **NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”**

(d) Automobile Liability: Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as General Liability)
Combined Single Limits, Bodily Injury and Property Damage -
Each Accident:

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

(e) Umbrella Liability: The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits –

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

(f) Workers’ Compensation: This insurance shall protect the Contractor against all claims under applicable state workers’ compensation laws. The Developer shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers’ compensation law. The policy limits shall not be less than the following:

Workers’ Compensation:	Statutory
Employer’s Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

(g) Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

- (i) Is licensed to do business in the State of Kansas;
- (ii) Carries a Best’s policy holder rating of A- or better; and
- (iii) Carries at least a Class VIII financial rating, **or**

(iv) Is a company mutually agreed upon by the City and Contractor.

(h) Subcontractors’ Insurance: If a part of the work is to be sublet, the Developer shall either:

1. Cover all subcontractors in its insurance policies, **or**
2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

E. Discrimination.

1. In accordance with the City's standard contracting requirements, the Developer agrees that:

(a) The Developer shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry or age;

(b) In all solicitations or advertisements for employees, the Developer shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

(c) If the Developer fails to comply with the manner in which the Developer reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

(d) If the Developer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

(e) The Developer shall include the provisions of paragraphs (a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

2. The Developer further agrees that the Developer shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

ARTICLE III
TDD FINANCING

A. TDD Sales Tax. The City has delivered a copy of the TDD Resolution to the Kansas Department of Revenue ("DOR") imposing the TDD Sales Tax effective January 1, 2008. The Developer agrees to provide ongoing information to the DOR and the City

regarding new tenants within the Deer Creek TDD. Except as otherwise set forth herein, all TDD Sales Tax shall be available for and dedicated to pay Eligible Expenses until sufficient TDD Sales Tax has been received to pay the cost of Eligible Expenses or not later than the date the bonds issued to finance the project or refunding bonds issued therefore shall mature and shall be utilized according to the procedures set forth herein in the following order of priorities:

1. First, the Existing Deposit shall be used to pay accrued City Expenses, and the fees described in Article VII (A) incurred to the date hereof and Eligible Expenses to the extent of the Existing Deposit;

2. Second, to pay the principal and interest on TDD Bonds issued, if any, to finance the TDD Improvements;

3. Third, to pay or reimburse the City for all City Expenses including the City TDD Annual Administrative Fee; and

4. Fourth, to the extent permitted under the TDD Act, to reimburse the Developer for remaining Eligible Expenses.

B. TDD Sales Tax Fund. During the existence of the Deer Creek TDD and prior to issuance of TDD Bonds, if any, all TDD Sales Taxes generated within the Deer Creek TDD shall be deposited into a TDD Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State of Kansas and this Agreement.

C. TDD Bonds. At the request of the Developer, on a date agreed to by the City and the Developer and subject to the conditions set forth below in paragraph D, the City will endeavor to issue TDD Bonds in one or more series payable from the TDD Sales Tax.

D. Conditions Precedent to TDD Bond Issuance. The issuance of the TDD Bonds shall be subject to Developer complying with the terms of this Agreement and the following:

1. The Developer provides such documentation to the City as required by the Underwriter to reasonably demonstrate that the TDD Sales Tax revenues generated within the Deer Creek TDD are sufficient to pay debt service on the TDD Bonds with a coverage factor that the Underwriter determines is necessary and that is agreed to by the Developer and the City. The principal amount of the TDD Bonds and reimbursement of Eligible Expenses from TDD Sales Tax shall not exceed Eight Million and 00/100 Dollars (\$8,000,000.00).

2. The terms of the TDD Bonds, including but not limited to limitations on sales and transfers to sophisticated investors only, shall be acceptable to the Developer and the City.

3. Certification of Expenditures has been provided and accepted in accordance with Article IV(B) below.

4. The Underwriter shall hold the TDD Bonds in its own account or be responsible for marketing and selling the TDD Bonds, and the City shall be under no

obligation to issue TDD Bonds if such TDD Bonds are not marketable after reasonable effort by the Underwriter. Notwithstanding the foregoing, if the Underwriter determines that the TDD Bonds are not marketable after a reasonable effort by such Underwriter, the Developer shall have a right to request that the City market the TDD Bonds thereafter with an alternative underwriter that is reasonably approved by the City and Developer and upon terms and conditions that are reasonably approved by the City and Developer.

5. The Kansas Attorney General approves the transcript of proceedings relating to the TDD Bonds as required by K.S.A. 10-108.

6. Bond Counsel provides to the City an opinion to the effect that the TDD Bonds have been validly issued under Kansas law and, if applicable, the interest on the TDD Bonds is exempt from Kansas and federal income taxation, subject to the standard exceptions.

E. Satisfaction of Conditions. Upon receipt of the information set forth in Section III(D) above, the City shall at the Developer's request and within a reasonable time thereafter either:

1. Provide written notice to the Developer that the requirements of said subsection have been satisfied, at which time it will be the City's intent to issue the TDD Bonds; or

2. Provide written notice as to why such information is not satisfactory and provide specific instructions for resolving any alleged deficiencies.

F. TDD Bond Fund. If TDD Bonds are issued by the City, a TDD Bond Fund shall be created and administered by the City or its designee and will be utilized solely to repay the TDD Bonds and amounts, if any, required to pay rebate amounts. The specifics of the issuance and repayment of the TDD Bonds shall be in accordance with the TDD Bond Documents, to be approved by City ordinance, in accordance with this Agreement. In no event, except by mutual agreement between the parties hereto, shall the TDD Bond Documents be inconsistent with this Agreement. Upon issuance of the TDD Bonds, the Net TDD Bond Proceeds shall be disbursed to the Developer by the City or Bond Trustee for the purpose of funding Eligible Expenses in accordance with the terms of this Agreement and the TDD Bond Documents.

G. Privately Placed Bonds. The parties agree that, subject to the approval of the City, the TDD Bonds may be privately placed and sold to (i) institutional investors including, without limitation, insurance companies, funds and state or federally chartered financial institutions, and/or (ii) Developer and/or entities related to or affiliated with Developer.

H. Eligible Expenses Reimbursement. At the Developer's request, in lieu of issuing TDD Bonds to finance Eligible Expenses, the City agrees to reimburse the Developer from the TDD Sales Tax Fund for Eligible Expenses in accordance with the provisions of this Agreement.

I. Termination of the TDD. The City shall not terminate the TDD or cease the collection of TDD Sales Tax, except as provided by law, or as requested by the Developer.

ARTICLE IV
TDD REIMBURSEMENT

A. TDD Reimbursement. All TDD Sales Tax shall be used to reimburse the Developer for the cost of financing construction of the TDD Improvements, as described in **Exhibit C**, or to pay the principal of or interest on the Bonds. In no event will the reimbursement described hereunder exceed the maximum authority set out by the TDD Resolution and any changes must be approved by the City.

B. Certification of Expenditures. Developer shall certify all costs and expenditures to be made in connection with the TDD Improvements in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditure in the form attached hereto as **Exhibit D** setting forth the amount for which reimbursement is sought and an itemized listing of the related TDD Improvement. Prior to or concurrently with the first Certification of Expenditure submitted to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Such documentation shall include, but not be limited to:

(a) A scalable “General Layout” plan sheet showing the general layout and location of the TDD eligible items. Non-eligible items shall be clearly differentiated from eligible items.

(b) A summary of plan quantities delineating the eligible from non-eligible items.

(c) Copies of certified bid tabulations or contracts verifying the contractor’s bid on eligible items. Such tabulations or contracts must clearly differentiate items by eligible and non-eligible items.

2. Each Certification of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers and other evidence as the City shall reasonably require to document appropriate payment and shall include an overall cost summary, as well as a cost summary for each division of work (i/e/ grading, erosion control, roadway, sanitary sewer, storm sewer). The cost breakdown shall include the quantity, unit price and price extension for each eligible item requested for reimbursement.

3. The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certification of Expenditure is submitted, to examine the Developer’s and other’s records relating to all costs of TDD Improvements to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof. The Developer hereby agrees to pay all actual and verifiable expenses incurred by the City pursuant to this paragraph 3.

4. The City shall have thirty (30) calendar days after receipt of any Certification of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditure

relates to the TDD Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditure and reimburse the Developer for financing the cost of the TDD Improvements pursuant to the terms of this Agreement. If the City reasonably disapproves of the Certification of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period.

5. Within ninety (90) days of execution of this Agreement, the Developer shall submit a Certification of Expenditures for those expenditures made prior to the execution of this Agreement in connection with the TDD Improvements. During the Term, the Developer shall submit a Certification of Expenditures for those expenditures made in connection with the TDD Improvements within ninety (90) days of each expenditure.

ARTICLE V
ASSIGNMENT OF AGREEMENT BY DEVELOPER

Assignments by Developer. The Developer shall not assign or transfer all or any of its rights or duties under this Agreement without the prior written approval of the City (which will not be unreasonably withheld), except for assignments, transfers and conveyances of all or substantially all of Developer's rights and duties under this Agreement to a subsidiary or affiliate which is owned or controlled by the Developer or any entity owned or controlled, directly or indirectly, by the Developer. In the event of a transfer pursuant to this Article V that does not require the consent of the City, the Developer shall nonetheless promptly provide written notice of the same to the City.

ARTICLE VI
DEFAULTS AND REMEDIES

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a party, nor be entitled to damages if the other party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

3. The filing of a bankruptcy petition by the Developer.

B. Remedies on Default. Whenever any Event of Default by City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity. Whenever any Event of Default by Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements until such Event of Default is cured by the Developer and/or terminate this Agreement and/or (3) terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall Developer or the City be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement.

C. Legal Actions.

1. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

E. Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Enforced Delay; Extension of Times of Performance.

1. In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has

acted diligently and delays or defaults are due to default of the other party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; market conditions; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather.

2. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and the Developer.

ARTICLE VII **GENERAL PROVISIONS**

A. Expenses and City TDD Annual Administrative Fee. The Developer shall be responsible for and pay, within twenty (20) days of invoice, the reasonable legal fees of the City's Bond Counsel incurred in connection with the creation of the Deer Creek TDD and related agreements and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses pursuant to the terms of Article III(A)(1). Bond Counsel fees incurred with the issuance of the TDD Bonds, if any, will be paid from TDD Bonds and if such TDD Bonds are not issued shall be paid by the Developer. The Developer shall pay the City's financial advisor, where such services performed by the financial advisor are reasonably related and necessary to the City's analysis and review of the financing of the TDD Improvements including any issuance of TDD Bonds. Such financial advisor fees will be paid from proceeds of TDD Bonds and if such TDD Bonds are not issued shall be paid by the Developer. The TDD Sales Tax or the proceeds of the TDD Bonds, to extent permitted under the TDD Act and federal tax law, shall be used to pay the City TDD Annual Administrative Fee. The City TDD Annual Administrative Fee shall be due on the earlier of the date the TDD Sales Tax is received (but only if the TDD Act permits payment directly from the TDD Sales Tax) or any TDD Bonds are issued, except that the City TDD Annual Administrative Fee paid upon the issuance of TDD Bonds shall be reduced by any City TDD Annual Administrative Fee paid prior to the issuance of the TDD Bonds.

B. Time of Essence. Time is of the essence of this Agreement. The City and Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

C. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the parties or their successors in interest.

D. Immunity of Officers, Employees and Members of the City. No personal recourse shall be had for the payment of the principal of or interest on the TDD Bonds or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of

this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, for any default or breach by the City.

E. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the TDD Improvements as pertinent to the purposes of this Agreement.

F. Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Development, without charges or fees, at normal construction hours during the period of construction for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements.

G. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

H. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

I. Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement.

J. Kansas Law. This Agreement shall be construed in accordance with the laws of the State of Kansas.

K. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

SHOPPES AT DEER CREEK WOODS II, L.L.C.
Attention: Renee Yost and Chip Corcoran
1111 Lincoln Mall, Suite 111
Lincoln, NE 68508

With copies to:

John D. Peterson
Polsinelli Shughart, P.C.
6201 College Blvd., Ste. 500
Overland Park, KS 66211

To the City:

John Nachbar, City Manager
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

With copies to:

Kristy Stallings, Deputy City Manager
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

Robert Watson, City Attorney
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

L. 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 agreement.

M. Recordation of Agreement. The parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Johnson County, Kansas.

N. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

O. Survivorship. Notwithstanding the termination of this Agreement, Developer's obligations of insurance and indemnification set out in Article II shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during Term.

P. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

EXHIBITS

- Exhibit A TDD Petition
- Exhibit B Legal Description of the TDD District
- Exhibit C TDD Improvements
- Exhibit D Certification of Expenditure

EXHIBIT A

PETITION

REQUESTING THE CREATION OF A TRANSPORTATION DEVELOPMENT DISTRICT

TO: The Governing Body of the City of Overland Park, Kansas (hereinafter called "Governing Body")

The undersigned, being the owners of record, whether resident or not, of all that certain land located in the vicinity of the Northwest corner of 135th Street and Metcalf, such land being a portion of what is commonly referred to as the Deer Creek Woods Shopping Center ("Deer Creek"), and which is contained within the hereinafter described proposed transportation development district to be located within the City of Overland Park, Kansas (the "City"), do hereby request that the City create such transportation development district and authorize the construction of the transportation development district project improvements hereinafter set forth, all in the manner provided by K.S.A. 12-17,140 *et seq.* (the "Act"). In furtherance of such request, the petitioners state as follows:

Boundaries of Proposed Transportation Development District

A legal description of the boundaries of the proposed transportation development district (the "Deer Creek District") is set forth on **Exhibit A** attached hereto and incorporated by reference herein.

A map generally outlining the boundaries of the proposed Deer Creek District is attached as **Exhibit B** hereto, and incorporated by reference herein.

Proposed Transportation District Projects/Estimated Costs

The general nature of the proposed projects (the "Projects") within the proposed District is the construction of a structured parking garage; internal drives and parking lots; water and storm sewer improvements; sidewalks and pedestrian amenities; utility line locations and connections; and all other related work to complete the Projects in connection with the development of a mixed-use commercial and residential structure. The estimated costs of the Projects are set forth on **Exhibit C** attached hereto and incorporated by reference herein.

Maximum Cost and Method of Financing

The maximum cost of the Projects is \$12,811,255. The Projects will be financed with special obligation bonds that will be secured by the pledge of money received from the imposition of a transportation development district sales tax (the "TDD Tax"), in an amount not to exceed 1%, on the selling of tangible personal property at retail or rendering or furnishing of taxable services taxable pursuant to the provisions of the Kansas retailers' sales tax act within the proposed Deer Creek District. There will be **no** special assessments on property within the boundaries of the proposed Deer Creek District.

Names may not be withdrawn from this Petition by the signers hereof after the governing body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first.

IN WITNESS WHEREOF, we the undersigned petitioners have executed the above foregoing petition to create the Deer Creek Transportation Development District at the dates recorded below:

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

BANK MIDWEST, N.A.

By:

Paul P. Holewinski, Executive Vice President

Date:

3/2/07

STATE OF Missouri)

) ss.

COUNTY OF Jackson)

On this 2nd day of March, 2007, before me personally appeared PAUL P. HOLEWINSKI to me personally known, who being by me duly sworn did say that he is an Executive Vice President member/manager of BANK MIDWEST, N.A., a national banking association and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company association.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written

Lisa E. Passantino
NOTARY PUBLIC

My Commission Expires:

10-30-2007

[SEAL]



BONNER 486, LLC

By: [Signature]
TYLER OLIVER

Date: 3/26/07

STATE OF Kansas)
COUNTY OF Johnson) SS

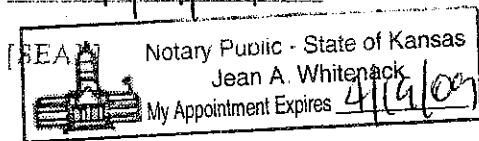
On this 26th day of March, 2007, before me personally appeared TYLER OLIVER to me personally known, who being by me duly sworn did say that he is a member/manager of BONNER 486, LLC, a KSile, and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
NOTARY PUBLIC

My Commission Expires:

4/19/09



SHOPPES AT DEER CREEK WOODS, L.L.C.

By: Walter S. Clements

WALTER S. CLEMENTS

Date: 3-19-07

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

On this 19 day of March, 2007, before me personally appeared WALTER S. CLEMENTS to me personally known, who being by me duly sworn did say that he is a member/manager of SHOPPES AT DEER CREEK WOODS, L.L.C., a limited liability company and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written

Kristi A. Hurla
NOTARY PUBLIC

My Commission Expires:

10-16-10

[SEAL]



SHOPPES AT DEER CREEK WOODS II, L.L.C.

By: Walter S. Clements

WALTER S. CLEMENTS

Date: 3-19-07

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

On this 19 day of March, 2007, before me personally appeared WALTER S. CLEMENTS to me personally known, who being by me duly sworn did say that he is a member/manager of SHOPPES AT DEER CREEK WOODS II, L.L.C., a limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company

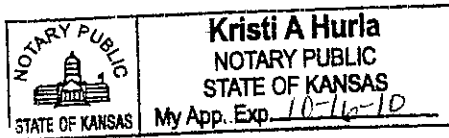
In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Kristi A Hurla
NOTARY PUBLIC

My Commission Expires:

10-16-10

[SEAL]



BUILDING 6S, LLC

By: Walter S Clements

WALTER S CLEMENTS

Date: 3-19-07

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

On this 19 day of March, 2007, before me personally appeared WALTER S. CLEMENTS to me personally known, who being by me duly sworn did say that he is a member/manager of BUILDING 6S, L.L.C., a limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Kristi A. Hurla
NOTARY PUBLIC

My Commission Expires:

10-16-10

[SEAL]



BUILDING 4S/7S, LLC

By: Walter S. Clements
WALTER S. CLEMENTS

Date: 3-19-07

STATE OF Kansas)
) ss
COUNTY OF Johnson)

On this 19 day of MARCH, 2007, before me personally appeared WALTER S. CLEMENTS to me personally known, who being by me duly sworn did say that he is a member/manager of BUILDING 4S/7S, LLC, a limited liability company and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written

Kristi A. Huria
NOTARY PUBLIC

My Commission Expires:

10-16-10

[SEAL]



ROBERT P. RAMM REVOCABLE TRUST

By: *Bob Ramm* TRUSTEE

BOB RAMM

Date: 11/13/2006

STATE OF Missouri)
COUNTY OF Jackson) ss.

On this 13th day of November, 2006, before me personally appeared BOB RAMM to me personally known, who being by me duly sworn did say that he is a member/manager of ROBERT P. RAMM REVOCABLE TRUST, a _____, and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Mary Radosevich
NOTARY PUBLIC

My Commission Expires:

11/12/07

[SEAL]

MARY RADOSEVICH
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Nov. 12, 2007

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

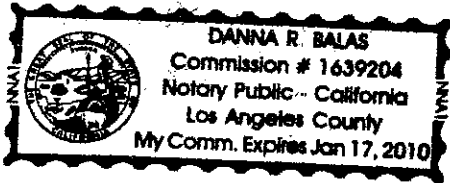
County of Los Angeles } ss.

On March 14, 2007, before me, Danna R Balas, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Elie Balar,
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.
Danna R Balas
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Petition

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

CHICK-FIL-A, INC.

By:

Erwin C. Reid

Printed Name:

ERWIN C. REID

Date:

4/10/07

STATE OF

GEORGIA)

COUNTY OF

HENRY) ss.

On this 10 day of APRIL, 2007, before me personally appeared - ERWIN C. REID to me personally known, who being by me duly sworn did say that he/she is a member/manager/officer of CHICK-FIL-A, a GEORGIA CORP., and that said instrument was signed and delivered in behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

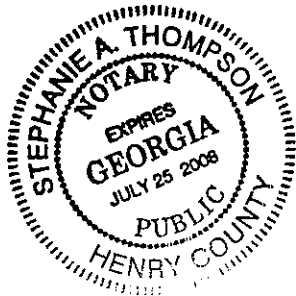
In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written

Stephanie A. Thompson
NOTARY PUBLIC

My Commission Expires:

7-25-08

[SEAL]



THIS PETITION was filed in my office on _____; and was examined, considered and found sufficient by the Governing Body of the City of Overland Park on _____.

City Clerk

047938 / 108333
KWMAX 262433

DEER CREEK TDD EXHIBIT A

TDD Description

All that part of Deer Creek Woods, Shoppes at Deer Creek Woods II and Shoppes at Deer Creek Woods III, subdivisions lying in the Southeast Quarter of Section 30, Township 13 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Southeast corner of the Southeast Quarter of Section 30, Township 13 South, Range 25 East; thence North 2 degrees 05 minutes 52 seconds West along the East line of the Southeast Quarter of said Section 30 a distance of 100.00 feet to a point on the Easterly prolongation of the North right of way line of 135th Street; thence South 87 degrees 44 minutes 33 seconds West along said prolongation a distance of 80.00 feet to its point of intersection with the West right of way line of Metcalf Avenue, the POINT OF BEGINNING, said point also being the Southeast corner of Tract D, Shoppes at Deer Creek Woods II, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 44 minutes 33 seconds West along the South line of Tract D, Lots 5 and 4 of said Second Plat, Lots 3,2, Tracts B and F of Shoppes at Deer Creek Woods II, Third Plat, Lot 6 and Tract A of Shoppes at Deer Creek Woods III, First Plat, and Lot 5 of Shoppes at Deer Creek Woods III, Second Plat, all subdivisions in the City of Overland Park, Johnson County, Kansas, a distance of 1255.68 feet to a point on the East line of the Southwest Quarter of the Southeast Quarter of said Section 30; thence North 2 degrees 02 minutes 15 seconds West along the East line of the Southwest Quarter of the Southeast Quarter of said Section 30 and the Southerly line of Lot 5 of said Shoppes at Deer Creek Woods III, Second Plat, a distance of 68.86 feet to a point; thence North 83 degrees 07 minutes 59 seconds West along the South line of Lot 5 of said Shoppes at Deer Creek Woods III, Second Plat, a distance of 299.06 feet to the Southwest corner of said Lot 5; thence North 6 degrees 52 minutes 01 seconds East along the West line of said Lot 5 a distance of 45.00 feet to a point; thence South 83 degrees 07 minutes 59 seconds East along the West line of said Lot 5 a distance of 34.57 feet to a point; thence North 6 degrees 52 minutes 01 seconds East along the West line of said Lot 5 a distance of 107.30 feet to a point; thence North 37 degrees 06 minutes 39 seconds East along the West line of said Lot 5 a distance of 43.73 feet to a point on the South line of Tract B of said Shoppes at Deer Creek Woods III, First Plat; thence in a Northwesterly direction along the South line of said Tract B and along a curve to the right whose initial tangent bears North 50 degrees 26 minutes 54 seconds West, having a radius of 282.00 feet, through a central angle of 10 degrees 29 minutes 09 seconds, an arc distance of 51.61 feet to a point; thence North 39 degrees 57 minutes 45 seconds West along the South line of said Tract B a distance of 12.50 feet to the Southeast corner of Lot 3, Shoppes at Deer Creek Woods III, Third Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 50 degrees 02 minutes 15 seconds West along the Southeasterly line of said Lot 3 a distance of 40.00 feet to a point; thence North 39 degrees 57 minutes 45 seconds West along the Southeasterly line of said Lot 3 a distance of 13.81 feet to a point; thence South 50 degrees 02 minutes 15 seconds West along the Southeasterly line of said Lot 3 a distance of 30.00 feet to the Southernmost corner of said Lot 3; thence North 39 degrees 57 minutes 45 seconds West along the Southwesterly line of said Lot 3 a distance of 112.10 feet to a point; thence South 56 degrees 33 minutes 20 seconds West along the Southwesterly line of said Lot 3 a distance of 16.61 feet to a point; thence North 33 degrees 30 minutes 08 seconds West along the Southwesterly line of said Lot 3 a distance of 113.84 feet to a point on the Southeasterly line of Tract H of Shoppes at Deer Creek Woods III, Fourth Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 56 degrees 29 minutes 52 seconds West along the Southeasterly line of said Tract H a distance of 228.62 feet to the Southernmost corner of said Tract H; thence North 39 degrees 57 minutes 45 seconds West along the Southwesterly line of said Tract H a distance of 46.02 feet to the Southwest corner of said Tract H; thence North 60 degrees 06 minutes 41 seconds East along the

North line of Tract H and the South line of Tract J of said Shoppes at Deer Creek Woods III, Second Plat a distance of 495.68 feet to a point; thence North 49 degrees 51 minutes 05 seconds East along the South line of said Tract J a distance of 140.98 feet to a point; thence North 37 degrees 05 minutes 27 seconds East along the South line of said Tract J a distance of 211.32 feet to a point on the East line of the Southwest Quarter of the Southeast Quarter of said Section 30; thence South 2 degrees 02 minutes 15 seconds East along the East line of the Southwest Quarter of the Southeast Quarter of said Section 30 a distance of 31.75 feet to a point; thence South 50 degrees 17 minutes 53 seconds East a distance of 201.86 feet to a point on the Northwesterly prolongation of the Westerly line of Tract C of Deer Creek Woods, First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence in a Southeasterly direction along said Westerly line and its prolongation and along a curve to the right, having a radius of 300.00 feet, through a central angle of 43 degrees 59 minutes 34 seconds, an arc distance of 230.35 feet to a point on the Westerly line of said Tract C; thence South 6 degrees 18 minutes 19 seconds East along the Westerly line of said Tract C a distance of 56.81 feet to the Southwest corner thereof; thence North 87 degrees 44 minutes 19 seconds East along the South line of said Tract C a distance of 169.48 feet to the Southeast corner thereof; thence North 43 degrees 55 minutes 28 seconds East along the Easterly line of said Tract C a distance of 186.00 feet to a point; thence North 40 degrees 16 minutes 17 seconds East along the Easterly line of said Tract C a distance of 17.26 feet to the Northwest corner of Tract H, Deer Creek Woods, Sixth Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence North 89 degrees 01 minutes 57 seconds East along the North line of said Tract H a distance of 150.97 feet to a point on the East line of Tract F of said Deer Creek Woods, First Plat; thence North 32 degrees 03 minutes 30 seconds East along the East line of said Tract F a distance of 310.49 feet to the Northeast corner thereof; thence North 19 degrees 46 minutes 33 seconds East a distance of 72.34 feet to the Southeast corner of Tract B of said Deer Creek Woods, First Plat; thence North 40 degrees 53 minutes 22 seconds East along the East line of said Tract B a distance of 67.19 feet to a point; thence South 87 degrees 06 minutes 03 seconds East along the East line of said Tract B a distance of 32.96 feet to a point; thence North 19 degrees 43 minutes 18 seconds East along the East line of said Tract B a distance of 281.31 feet to the Northwest corner of Lot 4, Deer Creek Woods, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence North 87 degrees 43 minutes 55 seconds East along the North line of said Lot 4 a distance of 160.52 feet to the Northeast corner thereof; thence South 2 degrees 05 minutes 52 seconds East along the East line of said Lot 4, the East lines of Tract E and Lot 1 of said Deer Creek Woods, First Plat and Lot 6, Deer Creek Woods, Third Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 768.50 feet to the Southeast corner of said Lot 6; thence South 87 degrees 44 minutes 19 seconds West along the South line of said Lot 6 a distance of 10.00 feet to the Northeast corner of Tract C, of said Shoppes at Deer Creek Woods II, Second Plat; thence South 2 degrees 05 minutes 52 seconds East along the East line of Tracts C and D of said Shoppes at Deer Creek Woods, Second Plat, and Lots 7 and 6, Shoppes at Deer Creek Woods, First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas a distance of 460.61 feet to the POINT OF BEGINNING and containing 1,180,587 Square Feet or 27.103 Acres, more or less.

DEER CREEK TOD
EXHIBIT C

DEER CREEK WOODS II BUILDING 05

TOD Eligible Project Expenses

Item No.	Item Description	Unit	Qty.	Bid Price	Extension
1	SITE PREPARATIONS				
	Mobilization	LS	1.0	\$ 25,000.00	25,000.00
	Construction Entrance	SY	184.0	\$ 15.00	2,760.00
	Clearing and Grubbing	LS	1.0	\$ 25,000.00	25,000.00
	Erosion Control	LF	3,350.0	\$ 3.75	12,375.00
	Rock Excavation including hauling off site	CY	12,830.0	\$ 80.00	760,600.00
	Excavation includes hauling off site	CY	25,670.0	\$ 18.50	474,895.00
	Linear Seawalls 18" Deep (Building Pad)	SY	5,500.0	\$ 13.00	71,500.00
2	UTILITIES				
	18" RCP	LF	143.0	\$ 50.00	7,150.00
	24" RCP	LF	154.0	\$ 60.00	9,240.00
	5x6" Curb Inlet	EA	3.0	\$ 4,000.00	12,000.00
	5x5" Junction Box	EA	2.0	\$ 4,400.00	8,800.00
	15" HDPE Road Drains	LF	583.0	\$ 30.00	17,490.00
	Connect to Existing Curb Inlet	EA	1.0	\$ 2,500.00	2,500.00
	Inlet Protection	EA	9.0	\$ 300.00	2,700.00
	8" Sanitary Sewer Stub	LF	220.0	\$ 55.00	12,100.00
	8" Domestic and Fire Protection	LF	220.0	\$ 45.00	9,900.00
	Fire Line Connection	EA	2.0	\$ 5,000.00	10,000.00
3	SURFACE PARKING				
	Remove Existing Asphalt and Curb	LS	1.0	\$ 3,000.00	3,000.00
	Type "B" Curb and Gutter	LF	3,030.0	\$ 14.00	42,420.00
	Temporary Asphalt Curb	LF	44.0	\$ 50.00	2,200.00
	7" Concrete Pavement	SY	184.0	\$ 55.00	10,120.00
	5" Concrete Sidewalk	SF	4,400.0	\$ 4.60	19,800.00
	Sidewalk Ramp	EA	4.0	\$ 1,200.00	4,800.00
	Light Duty Asphalt Pavement	SY	2,530.0	\$ 28.00	70,840.00
	Heavy Duty Asphalt Pavement	SY	3,300.0	\$ 35.00	115,500.00
	4" PVC Conduit	LF	385.0	\$ 13.00	5,005.00
	#4 Wire	LF	1,210.0	\$ 2.00	2,420.00
	Electrical Junction Boxes	EA	1.0	\$ 400.00	400.00
	Light Poles	EA	7.0	\$ 5,000.00	35,000.00
	Transformer Ped (10x10')	EA	1.0	\$ 3,000.00	3,000.00
	Signage	LS	1.0	\$ 2,000.00	2,000.00
	Pavement Marking	LS	1.0	\$ 10,000.00	10,000.00
4	DRIVE AISLE				
	Structural Concrete & Pavement	CY	600.0	\$ 450.00	270,000.00
5	STRUCTURED PARKING GARAGE				
		STALLS	150.0	\$ 23,374.00	3,001,044.00
6	HARDSCAPE/LANDSCAPE & AMENITIES				
	Irrigation	LS	1.0	\$ 80,000.00	80,000.00
	Landscaping	LS	1.0	\$ 80,000.00	80,000.00
	Hardscaping	LS	1.0	\$ 250,000.00	250,000.00
	OTHER REIMBURSEABLE ITEMS				
	Permits and Bonds	LS	1.0	\$ 200,000.00	200,000.00
	Land	LS	1.0	\$ 4,000,000.00	4,000,000.00
	Engineering and Architectural Fees	LS	1.0	\$ 975,230.00	975,230.00
	Development/Finance Fees	LS	1.0	\$ 1,525,057.00	1,525,057.00
	Total TOD Eligible Exp				12,811,255.00

EXHIBIT B
LEGAL DESCRIPTION DEER CREEK WOODS TDD

TDD Description

All that part of Deer Creek Woods, Shoppes at Deer Creek Woods II and Shoppes at Deer Creek Woods III, subdivisions lying in the Southeast Quarter of Section 30, Township 13 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Southeast corner of the Southeast Quarter of Section 30, Township 13 South, Range 25 East; thence North 2 degrees 05 minutes 52 seconds West along the East line of the Southeast Quarter of said Section 30 a distance of 100.00 feet to a point on the Easterly prolongation of the North right of way line of 135th Street; thence South 87 degrees 44 minutes 33 seconds West along said prolongation a distance of 80.00 feet to its point of intersection with the West right of way line of Metcalf Avenue, the POINT OF BEGINNING, said point also being the Southeast corner of Tract D, Shoppes at Deer Creek Woods II, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 44 minutes 33 seconds West along the South line of Tract D, Lots 5 and 4 of said Second Plat, Lots 3, 2, Tracts B and F of Shoppes at Deer Creek Woods II, Third Plat, Lot 6 and Tract A of Shoppes at Deer Creek Woods III, First Plat, and Lot 5 of Shoppes at Deer Creek Woods III, Second Plat, all subdivisions in the City of Overland Park, Johnson County, Kansas, a distance of 1255.68 feet to a point on the East line of the Southwest Quarter of the Southeast Quarter of said Section 30; thence North 2 degrees 02 minutes 15 seconds West along the East line of the Southwest Quarter of the Southeast Quarter of said Section 30 and the Southerly line of Lot 5 of said Shoppes at Deer Creek Woods III, Second Plat, a distance of 68.86 feet to a point; thence North 83 degrees 07 minutes 59 seconds West along the South line of Lot 5 of said Shoppes at Deer Creek Woods III, Second Plat, a distance of 299.06 feet to the Southwest corner of said Lot 5; thence North 6 degrees 52 minutes 01 seconds East along the West line of said Lot 5 a distance of 45.00 feet to a point; thence South 83 degrees 07 minutes 59 seconds East along the West line of said Lot 5 a distance of 34.57 feet to a point; thence North 6 degrees 52 minutes 01 seconds East along the West line of said Lot 5 a distance of 107.30 feet to a point; thence North 37 degrees 06 minutes 39 seconds East along the West line of said Lot 5 a distance of 43.73 feet to a point on the South line of Tract B of said Shoppes at Deer Creek Woods III, First Plat; thence in a Northwesterly direction along the South line of said Tract B and along a curve to the right whose initial tangent bears North 50 degrees 26 minutes 54 seconds West, having a radius of 282.00 feet, through a central angle of 10 degrees 29 minutes 09 seconds, an arc distance of 51.61 feet to a point; thence North 39 degrees 57 minutes 45 seconds West along the South line of said Tract B a distance of 12.50 feet to the Southeast corner of Lot 3, Shoppes at Deer Creek Woods III, Third Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 50 degrees 02 minutes 15 seconds West along the Southeasterly line of said Lot 3 a distance of 40.00 feet to a point; thence North 39 degrees 57 minutes 45 seconds West along the Southeasterly line of said Lot 3 a distance of 13.81 feet to a point; thence South 50 degrees 02 minutes 15 seconds West along the Southeasterly line of said Lot 3 a distance of 30.00 feet to the Southernmost corner of said Lot 3; thence North 39 degrees 57 minutes 45 seconds West along the Southwesterly line of said Lot 3 a distance of 112.10 feet to a point; thence South 56 degrees 33 minutes 20 seconds West along the Southwesterly line of said Lot 3 a distance of 16.61 feet to a point; thence North 33 degrees 30 minutes 08 seconds West along the Southwesterly line of said Lot 3 a distance of 113.84 feet to a point on the Southeasterly line of Tract H of Shoppes at Deer Creek Woods III, Fourth Plat, a subdivision in the City of

Overland Park, Johnson County, Kansas; thence South 56 degrees 29 minutes 52 seconds West along the Southeasterly line of said Tract H a distance of 228.62 feet to the Southernmost corner of said Tract H; thence North 39 degrees 57 minutes 45 seconds West along the Southwesterly line of said Tract H a distance of 46.02 feet to the Southwest corner of said Tract H; thence North 60 degrees 06 minutes 41 seconds East along the North line of Tract H and the South line of Tract J of said Shoppes at Deer Creek Woods III, Second Plat a distance of 495.68 feet to a point; thence North 49 degrees 51 minutes 05 seconds East along the South line of said Tract J a distance of 140.98 feet to a point; thence North 37 degrees 05 minutes 27 seconds East along the South line of said Tract J a distance of 211.32 feet to a point on the East line of the Southwest Quarter of the Southeast Quarter of said Section 30; thence South 2 degrees 02 minutes 15 seconds East along the East line of the Southwest Quarter of the Southeast Quarter of said Section 30 a distance of 31.75 feet to a point; thence South 50 degrees 17 minutes 53 seconds East a distance of 201.86 feet to a point on the Northwesterly prolongation of the Westerly line of Tract C of Deer Creek Woods, First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence in a Southeasterly direction along said Westerly line and its prolongation and along a curve to the right, having a radius of 300.00 feet, through a central angle of 43 degrees 59 minutes 34 seconds, an arc distance of 230.35 feet to a point on the Westerly line of said Tract C; thence South 6 degrees 18 minutes 19 seconds East along the Westerly line of said Tract C a distance of 56.81 feet to the Southwest corner thereof; thence North 87 degrees 44 minutes 19 seconds East along the South line of said Tract C a distance of 169.48 feet to the Southeast corner thereof; thence North 43 degrees 55 minutes 28 seconds East along the Easterly line of said Tract C a distance of 186.00 feet to a point; thence North 40 degrees 16 minutes 17 seconds East along the Easterly line of said Tract C a distance of 17.26 feet to the Northwest corner of Tract H, Deer Creek Woods, Sixth Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence North 89 degrees 01 minutes 57 seconds East along the North line of said Tract H a distance of 150.97 feet to a point on the East line of Tract F of said Deer Creek Woods, First Plat; thence North 32 degrees 03 minutes 30 seconds East along the East line of said Tract F a distance of 310.49 feet to the Northeast corner thereof; thence North 19 degrees 46 minutes 33 seconds East a distance of 72.34 feet to the Southeast corner of Tract B of said Deer Creek Woods, First Plat; thence North 40 degrees 53 minutes 22 seconds East along the East line of said Tract B a distance of 67.19 feet to a point; thence South 87 degrees 06 minutes 03 seconds East along the East line of said Tract B a distance of 32.96 feet to a point; thence North 19 degrees 43 minutes 18 seconds East along the East line of said Tract B a distance of 281.31 feet to the Northwest corner of Lot 4, Deer Creek Woods, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence North 87 degrees 43 minutes 55 seconds East along the North line of said Lot 4 a distance of 160.52 feet to the Northeast corner thereof; thence South 2 degrees 05 minutes 52 seconds East along the East line of said Lot 4, the East lines of Tract E and Lot 1 of said Deer Creek Woods, First Plat and Lot 6, Deer Creek Woods, Third Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 768.50 feet to the Southeast corner of said Lot 6; thence South 87 degrees 44 minutes 19 seconds West along the South line of said Lot 6 a distance of 10.00 feet to the Northeast corner of Tract C, of said Shoppes at Deer Creek Woods II, Second Plat; thence South 2 degrees 05 minutes 52 seconds East along the East line of Tracts C and D of said Shoppes at Deer Creek Woods, Second Plat, and Lots 7 and 6, Shoppes at Deer Creek Woods, First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas a distance of 460.61 feet to the POINT OF BEGINNING and containing 1,180,587 Square Feet or 27.103 Acres, more or less.

EXHIBIT C

DEER CREEK WOODS

TDD Scope of Work - Categories of Eligible Expense

Item No.	Item Description
1	SITE PREPARATIONS
	Mobilization
	Construction Entrance
	Clearing and Grubbing
	Erosion Control
	Rock Excavation includes hauling off site
	Excavation includes hauling off site
	Lime Screenings 18" Deep (Building Pad)
2	UTILITIES
	18" RCP
	24" RCP
	5x6' Curb Inlet
	5x5' Junction Box
	15" HDPE Roof Drains
	Connect to Existing Curb Inlet
	Inlet Protection
	8" Sanitary Sewer Stub
	6" Domestic and Fire Protection
	Fire Line Connection
3	SURFACE PARKING
	Remove Existing Asphalt and Curb
	Type "B" Curb and Gutter
	Temporary Asphalt Curb
	7" Concrete Pavement
	5' Concrete Sidewalk
	Sidewalk Ramp
	Light Duty Asphalt Pavement
	Heavy Duty Asphalt Pavement
	4" PVC Conduit
	#4 Wire
	Electrical Junction Boxes
	Light Poles
	Transformer Pad (10'x10')
	Signage
	Pavement Marking
4	DRIVE AISLE
	Structural Concrete & Pavement
5	STRUCTURED PARKING GARAGE
6	HARDSCAPE/LANDSCAPE & AMENITIES
	Irrigation
	Landscaping
	Hardscaping
	OTHER REIMBURSEABLE ITEMS
	Permits and Bonds
	Land
	Engineering and Architectural Fees
	Development/Finance Fees

EXHIBIT D
FORM OF CERTIFICATION OF EXPENDITURE

Date: _____

Certification # _____

Governing Body of the
City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 20__ (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and Shoppes at Deer Creek Woods II, L.L.C. (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer for the cost of financing the TDD Improvements, as follows:

1. To the best of my knowledge, all amounts are expenses for TDD Improvements that are reimbursable to the Developer pursuant to the Agreement.
2. All amounts have been advanced by the Developer for TDD Improvement costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ ____ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes _____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

Approved:

City's Representative

By: _____
Its _____

**EXHIBIT A
TO CERTIFICATION OF EXPENDITURES
OF DEER CREEK WOODS DEVELOPMENT PROJECT
PAGE ____ OF _____**

Date: _____

Certification # _____

	Amount of Expense
DESCRIPTION OF EXPENSE (ATTACH ADDITIONAL SUPPORTING DOCUMENTATION)	\$ _____
1.	\$ _____
2.	\$ _____
3.	\$ _____
4.	\$ _____
TOTAL EXPENSES	\$ _____

Initials of Developer