
TAX COMPLIANCE AGREEMENT

Dated May 13, 2010

Among

CITY OF OVERLAND PARK, KANSAS,

and

OAK PARK MALL, LLC

and

**UMB BANK, N.A.
as Trustee**

\$

**Transportation Development District Sales Tax Revenue Bonds
Series 2010
(Oak Park Mall Project)**

TAX COMPLIANCE AGREEMENT

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TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the “Tax Agreement”), entered into this 13th day of May 2010, by and among the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas (the “City”), **OAK PARK MALL, LLC**, a Kansas limited liability company (the “Developer”), and **UMB BANK, N.A.**, Kansas City, Missouri, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”);

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the City of \$_____ principal amount of Transportation Development District Sales Tax Revenue Bonds, Series 2010 (Oak Park Mall Project) (the “Bonds”).

2. The City is issuing the Bonds under a Trust Indenture dated as of May 1, 2010 (the “Indenture”) by and between the City and the Trustee (the “Indenture”), for the purpose of funding certain transportation projects as described in this Tax Agreement and in the Indenture.

3. The Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations and rulings issued by the U.S. Treasury Department (the “Regulations”), impose certain limitations on the uses and investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which interest on the Bonds will be excluded from gross income for federal income tax purposes.

4. The City, the Developer and the Trustee are entering into this Tax Agreement in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the City, the Developer and the Trustee represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in **Section 101** of the Indenture, and certain other words and phrases have the meanings assigned in Code § 148 and the Regulations. In addition, the following words and terms used in this Tax Agreement have the following meanings:

“Bona Fide Debt Service Fund” means a fund, which may include Bond proceeds, that

(1) is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year; and

(2) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (a) the earnings on the fund for the immediately preceding Bond Year, or (b) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

“Bond” or **“Bonds”** means the City’s Transportation Development District Sales Tax Revenue Bonds, Series 2010 (Oak Park Mall Project), issued in the original principal amount of \$_____.

“Bond Counsel” means Kutak Rock LLP, or other firm of nationally recognized bond counsel acceptable to the City and the City.

“Bond Year” means each one-year period (or shorter period for the first Bond Year) ending May 1.

“City” means the City of Overland Park, Kansas, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas.

“Code” means the Internal Revenue Code of 1986, as amended.

“Computation Date” means each date on which arbitrage rebate for the Bonds is computed. The City may treat any date as a Computation Date, subject to the following limits: (1) the first Computation Date cannot be later than five years after the Issue Date; (2) each subsequent rebate installment payment will be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and (3) the date the last Bond is discharged is the final Computation Date. The City selects June 1, 2013 as the first Computation Date but reserves the right to select another date consistent with the Regulations.

“Developer” means Oak Park Mall, LLC, a Kansas limited liability company and its successors and assigns.

“Financed Facilities” means all of the property financed or refinanced with the proceeds of the Bonds as described on **Exhibit B** attached hereto.

“Gross Proceeds” means (1) sale proceeds (any amounts actually or constructively received by the City from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest); (2) investment proceeds (any amounts received from investing sale proceeds, other investment proceeds, or transferred proceeds); (3) any transferred proceeds; (4) any amounts held in a sinking fund for the Bonds; (5) any amounts held in a pledged fund for the Bonds; and (6) any other replacement proceeds. Specifically, Gross Proceeds include all amounts held in the following funds and accounts:

- (1) TDD Sales Tax Revenue Fund.
- (2) Project Fund.
- (3) Costs of Issuance Fund.
- (4) Debt Service Reserve Fund.
- (5) Rebate Fund.

“Guaranteed Investment Contract” is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (e.g., a forward supply contract).

“Indenture” means the Trust Indenture dated as of May 1, 2010, as originally executed by the City and the Trustee, as may be amended and supplemented by Supplemental Indentures in accordance with the provisions of the Indenture.

“Investment” means any security, obligation, annuity contract or other investment-type property which is purchased directly with, or otherwise allocated to, Gross Proceeds. Such term does not include tax-exempt bonds, except for “specified private activity bonds” as such term is defined in Code § 57(a)(5)(C).

“IRS” means the United States Internal Revenue Service.

“Issue Date” means May 13, 2009.

“Minor Portion” means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

“Non-Qualified Use” means use of Bond proceeds or the Financed Facilities in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determines whether Bond proceeds or Financed Facilities are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facilities, will constitute use under Regulations § 1.141-3.

“Non Qualified User” means any person or entity other than a Qualified User.

“Opinion of Bond Counsel” means the written opinion of Kutak Rock LLP or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“Qualified User” means a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Reasonable Retainage” means Gross Proceeds retained by the City for reasonable business purposes, such as to ensure or promote compliance with a construction contract; but that amount may not exceed 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date.

“Rebate Analyst” means Bond Counsel, an independent certified public accountant, or such other person or firm selected by the Trustee to compute arbitrage rebate.

“Redevelopment Agreement” means the Development and Indemnity Agreement dated as of July 1, 2009, by and between the City and the Developer, as further amended from time to time.

“Regulations” means all regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

“Sinking Funds” means, collectively, the TDD Sales Tax Revenue Fund and the Debt Service Fund.

“Tax Agreement” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“TDD Debt Service Fund” means the Debt Service Fund established by the Indenture.

“TDD Costs of Issuance Fund” means the Costs of Issuance Fund established by the Indenture.

“TDD Rebate Fund” means the Rebate Fund established by the Indenture.

“Transcript” means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

“Trustee” means UMB Bank, N.A., Kansas City, Missouri, a national banking association duly organized and existing under the laws of the United States of America, and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as trustee under the Indenture.

“Yield” means yield on the Bonds, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the City. The City represents and covenants to the City and the Trustee as follows:

(a) **Organization and Authority.** The City (1) is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas, and (2) has lawful

power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary corporate action has been duly authorized to execute and deliver the Indenture and this Tax Agreement, acting by and through its duly authorized officers.

(b) ***Tax-Exempt Status of Bonds.*** In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the City:

(1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code;

(2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Indenture in a manner that would violate applicable provisions of the Code; and

(3) will not use, or permit the use of, any portion of the Financed Facilities in a manner that would violate applicable provisions of the Code.

(c) ***Limit on Private Business Use.*** More than 10% of the proceeds of the Bonds, and more than 10% of the Financed Facilities, will be used in a Non-Qualified Use. But the Bonds will not meet the private security or payment test for the reasons set forth in **Section 2.1(d)** below or the private loan test for the reasons set forth in **Section 2.1(e)** below.

(d) ***No Private Security or Payment.***

(1) The payment of principal and interest on the Bonds will not be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(A) secured by (i) any interest in property used or to be used for a private business use, or (ii) any interest in payments in respect of such property; or

(B) derived from payments (whether or not such payments are made to the City) in respect of property, or borrowed money, used or to be used for a private business use.

(2) For purposes of the forgoing, taxes of general application, including sales taxes collected on retail sales that occur in the Financed Facilities and payments-in-lieu-of-taxes, are not treated as a private payments or as private security.

(e) ***No Private Loan.*** No Bond proceeds will be loaned directly or indirectly to any Non-Qualified User.

(f) ***Reimbursement of Expenditures.*** On September 17, 2007, the City adopted Resolution No. 3620 (the "Resolution") wherein the City expressed its official intent to issue a

maximum principal amount of \$19,300,000 of bonds to finance or refinance costs of the Financed Facilities, and to reimburse the City for expenditures made for the Financed Facilities prior to the issuance of such obligations. A copy of the Resolution is included in the transcript of proceedings for the Bonds. No portion of the Bond proceeds will be used to reimburse an expenditure paid by the City more than 60 days prior to the date the resolution was adopted. The City will evidence each allocation of the proceeds of the Bonds to an expenditure in writing. No reimbursement allocation will be made for an expenditure made more than three years prior to the date of the reimbursement allocation. In addition no reimbursement allocation will be made more than 18 months following the later of (a) the date of the expenditure or (b) the date the Financed Facilities were placed in service.

(g) **Bonds Not Federally Guaranteed.** The City will not take any action or permit any action to be taken which would cause the Bonds to be “federally guaranteed” within the meaning of Code § 149(b).

(h) **IRS Form 8038-G.** Attached to this Tax Agreement as **Exhibit A** is a copy of IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) filed with the Internal Revenue Service in connection with the issuance of the Bonds as required by Code § 149.

(i) **Registered Bonds.** The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(j) **Hedge Bonds.** At least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purpose of the Bonds within three years after the Issue Date, and not more than 50% of the Bond proceeds will be invested in obligations having a substantially guaranteed yield for four years or more.

(k) **Arbitrage Certifications.** The facts, estimates and expectations recited in **Article III** of this Tax Agreement are true and accurate as of the Issue Date; and the City believes that the estimates and expectations recited in such Article are reasonable as of the Issue Date. The City, the Trustee and Kutak Rock LLP, Bond Counsel may rely on such statements and expectations. The City does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148; and to the best of the City’s knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.

(l) **Compliance with Future Tax Requirements.** The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(m) **City Reliance on Other Parties.** The expectations, representations and covenants of the City concerning uses of Bond proceeds and certain other money described in this Tax Agreement and other matters are based in whole or in part upon covenants, representations and certifications of the Developer. Although the City has made no independent investigation of the representations of the Developer, the City is not aware of any facts or circumstances that would

cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or exhibits to this Tax Agreement.

Section 2.2. Representations and Covenants of the Developer. The Developer represents and covenants to the City and the Trustee as follows:

(a) **Organization and Authority.** The Developer (1) is a limited liability company duly organized and existing under the laws of the State of Kansas, (2) has lawful power and authority to enter into, execute and deliver this Tax Agreement and to carry out its obligations under this Tax Agreement, and (3) by all necessary action has been duly authorized to execute and deliver this Tax Agreement, acting by and through its duly authorized officials.

(b) **Tax-Exempt Status of Bonds.** In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Developer will not use, or permit the use of, any portion of the proceeds of the Bonds deposited into the Project Fund for any purpose other than the TDD Project (as defined in the Redevelopment Agreement).

Section 2.3. Representations and Covenants of the Trustee. The Trustee represents and covenants to the City and the Developer as follows:

(a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to preserve the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(b) The Trustee, acting on behalf of the City and the Developer, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide the Trustee with such information as it may request in order to determine all matters relating to (a) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not “arbitrage bonds” within the meaning of Code § 148, and (b) compliance with arbitrage rebate requirements of Code § 148(f). All costs and expenses incurred in connection with supplying the foregoing information will be paid from the TDD Sales Tax Revenue Fund.

Section 2.4. Survival of Representations and Covenants. All representations, covenants and certifications of the City, the Developer and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the City, the Developer or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds under the Indenture, or until the final maturity date and payment of all Bonds Outstanding.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

Section 3.1. General. The purpose of this Article is to certify, under Regulations § 1.148-2(b), the City's expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the City's conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the City is an officer of the City responsible for issuing the Bonds.

Section 3.2. Reasonable Expectations. The facts, estimates and expectations set forth in this Article are based upon and in reliance upon the City's understanding of the documents and certificates that comprise the Transcript, including (a) the Indenture, (b) the Redevelopment Agreement, (c) this Tax Agreement, (d) covenants, representations and certifications of the Developer contained in this Tax Agreement and in the closing certificates of the Developer, (e) representations, warranties and certifications contained in the certificates of the Underwriter, and (f) representations, warranties and certifications of the Trustee contained in the Trustee's Closing Certificates. To the City's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the City set forth in this Tax Agreement are reasonable. The City has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

Section 3.3. Authority and Purpose for Bonds. The City is issuing and delivering the Bonds simultaneously with the execution of this Tax Agreement, under the laws of the State of Kansas, ordinances adopted by the governing body of the City, and the Indenture. The Bonds are being issued for the purpose of providing funds to (a) finance and reimburse the costs of the Financed Facilities and (b) pay certain costs of issuing the Bonds.

Section 3.4. Funds and Accounts.

(a) The following funds and accounts have been established in the custody of the Trustee under the Indenture:

- (1) Project Fund
- (2) Costs of Issuance Fund
- (3) Debt Service Fund
- (4) TDD Sales Tax Revenue Fund
- (5) Rebate Fund

Section 3.5. Amount and Use of Bond Proceeds and Other Money.

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the City from the sale of the Bonds will be as follows:

Principal Amount	\$19,300,000
Sale Proceeds	\$19,300,000
Total Proceeds	\$19,300,000

(b) *Use of Series Bond Proceeds.* The Bond proceeds are expected to be allocated to expenditures as follows:

(i) The accrued interest, if any, will be deposited in the Debt Service Fund and used to pay interest on the Bonds.

(ii) \$_____ will be deposited in the Costs of Issuance Fund and used to pay costs of issuance of the Bonds.

(iii) \$_____, representing the remaining Bond proceeds, will be deposited in the Project Fund and will be used to pay costs of the Financed Facilities.

Section 3.6. Completion of Financed Facilities. The City has incurred, or will incur within six months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the net sale proceeds of the Bonds on the Project. The completion of the Financed Facilities and the allocation of the net sale proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the net sale proceeds of the Bonds will be allocated to expenditures on the Financed Facilities within three years after the Issue Date.

Section 3.7. No Over-Issuance. The sale proceeds of the Bonds, together with expected investment earnings thereon and other money contributed by the City, do not exceed the cost of the governmental purpose of the Bonds as described above.

Section 3.8. Sinking Funds.

(a) *Sinking Funds.*

(1) The City is required under the Indenture to deposit all TDD Sales Tax Revenues into the TDD Sales Tax Revenue Fund held by the Trustee under the Indenture. The Trustee will deposit such payments into the TDD Sales Tax Revenue Fund.

(2) Under the Indenture, 45 days prior to each June 1, commencing on June 1, 2009, the Trustee will transfer Excess TDD Sales Tax Revenues to the Redemption Account, and the Trustee will then call for mandatory redemption on each _____ 1, commencing _____ 1, 20__, the principal amount of the Bonds that can be redeemed from such Excess Sales Tax Revenues.

(3) Under the Indenture, on the Business Day preceding each Interest Payment Date, the Trustee will allocate all money then held in the TDD Sales Tax Revenue Fund as follows:

(i) to the Debt Service Fund, an amount equal to the interest becoming due on the Bonds on the next Interest Payment Date (with credit for any amounts deposited in the Debt Service Fund as accrued interest or capitalized interest);

(ii) to the Rebate Fund, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code on the Bonds; and

(iii) to the Trustee, an amount sufficient for payment of any fees and expenses which are due and owing to the Trustee or any Paying Agent as a result of the Bonds.

Section 3.9. Reserve, Replacement and Pledged Funds.

(a) *Reserve Fund.* No Reserve Fund has been or will be established for the Bonds.

(b) *No Other Replacement Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay Costs of the Financed Facilities, and that have been or will be used to acquire higher yielding investments. Except for the TDD Sales Tax Revenue Fund and the Debt Service Fund are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the City encounters financial difficulty. Except for the TDD Sales Tax Revenue Fund and the TDD Debt Service Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the City encounters financial difficulty.

Section 3.10. Yield.

(a) *Offering Prices.* The Bonds have been sold at the price of \$_____ excluding accrued interest, if any.

(b) *Bond Yield.* Based on the Offering Prices, and the issue dates of the Bonds, the Yield on the Bonds is _____%, as computed by Bond Counsel as shown on **Exhibit C**. Costs of Issuance were not taken into account in this computation.

Section 3.11. [Reserved].

Section 3.12. Miscellaneous Arbitrage Matters.

(a) *[Reserved]*.

(b) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (a) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (b) overburdening the tax-exempt bond market.

(c) *Single Issue; No Other Issues.* All of the Bonds were sold on June 30, 2008. No other obligations of the City (1) are being sold within 15 days of the sale of the Bonds; (2) are being sold under the same plan of financing as the Bonds; and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

Section 3.13. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the City does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

ARTICLE IV

ARBITRAGE INVESTMENT AND REBATE INSTRUCTIONS

Section 4.1. Rebate Covenants. The Trustee will (a) engage, at the expense of the City, a Rebate Analyst to compute arbitrage rebate on the Bonds in accordance with the Regulations, and (b) pay to the United States, but solely from amounts held in the Rebate Fund, all such arbitrage rebate in accordance with this Tax Agreement and the Regulations. The Developer will make payments to the Trustee as necessary to comply with the rebate requirements of the Code § 148(f) and the Regulations.

Section 4.2. Temporary Periods/Yield Restriction. Except as described below, Gross Proceeds will not be invested at a yield greater than the yield on the Bonds:

(a) *Project Fund.* The Bond proceeds deposited to the Project Fund may be invested in obligations that bear a yield in excess of the Yield of the Bonds until the date which is three years from the Issue Date, and thereafter, may not be invested in obligations which bear a yield in excess of one-eighth of one percent (.125%) above the Yield of the Bonds. Any interest earnings or investment gains realized from the investment of Bond proceeds on deposit in the Project Fund may be reinvested pending disbursement in obligations that bear a yield in excess of the Yield of the Bonds. The period of unrestricted investment of such earnings will not exceed the longer of (a) a one-year period beginning on the date of receipt of such investment income or (b) the period ending on the date which is three years from the Issue Date, and thereafter, such earnings may not be invested in obligations that bear a yield in excess of one-eighth of one percent (.125%) above the Yield of the Bonds.

(b) *Debt Service Fund.* The Debt Service Fund will be used to pay the principal of and interest on the Bonds as the same become due and will be depleted at least once a year (except

for a reasonable carryover amount not to exceed the greater of one-twelfth of the annual debt service on the Bonds or one-year's interest earnings on such funds). It is reasonably expected that all amounts received by the City as income from the investment of such moneys held in the Debt Service Fund will be expended to pay the principal of and interest on the Bonds within one year of receipt thereof. All moneys deposited to the Debt Service Fund may be invested without regard to investment yield limitation for a period of thirteen months from the date of deposit therein, and thereafter, may not be invested at a yield in excess of the Yield on the Bonds.

(c) ***TTD Sales Tax Revenue Fund.*** Amounts deposited to the TDD Sales Tax Revenue Fund that are expected to pay debt service on the Bonds shall be invested in accordance with the investment restrictions imposed on the Debt Service Fund described in subsection (b) above.

(d) ***Costs of Issuance Fund.*** Bond proceeds deposited in the Cost of Issuance Fund may be invested without regard to investment yield limitation for a period of one year after the Issue Date, and thereafter, may not be invested in obligations bearing a yield in excess of the yield of the Bonds plus .125%.

(e) ***Sinking Funds.*** To the extent that the Sinking Funds, in the aggregate, qualify as a Bona Fide Debt Service Fund for the Bonds, money in such accounts shall be invested in accordance with the restrictions imposed on the Debt Service Account described in subsection (b) above.

(f) ***Rebate Fund.*** Moneys deposited in the Rebate Fund and the investment earnings thereon may be invested without regard to investment yield limitation. Investment Proceeds of the Bonds deposited in the Rebate Fund may be invested without regard to investment yield limitation for a one-year period beginning on the date of receipt, and thereafter, at a yield not in excess of the Yield on the Bonds

(g) ***Minor Portion.*** In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without yield restriction.

Section 4.3. Fair Market Value.

(a) ***General.*** No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.

(b) ***Established Securities Market.*** Except for Investments purchased for a yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value will be established using one of the paragraphs below. The fair market value of Investments purchased for a yield-restricted defeasance escrow will be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.

(c) **Certificates of Deposit.** The purchase price of a certificate of deposit (a “CD”) is treated as its fair market value on the purchase date if (i) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; (ii) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States; and (iii) the Yield is not less than the highest Yield published or posted by the CD City to be currently available on reasonably comparable CDs offered to the public.

(d) **Guaranteed Investment Contracts.** The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met

(1) **Bona Fide Solicitation for Bids.** The City or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (a) that the potential provider did not consult with any other potential provider about its bid, (b) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City, the Developer, the Trustee, or any other person (whether or not in connection with the bond issue), and (c) that the bid is not being submitted solely as a courtesy to the City, the Developer, the Trustee, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the City’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has

an established industry reputation as a competitive provider of the type of investments being purchased.

(2) *Bids Received.* The bids received by the City or the Trustee will meet all of the following requirements:

(A) The City or Trustee receives at least three bids from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (a) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue; (b) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue; and (c) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If the City or Trustee uses an agent or broker to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) *Winning Bid.* The winning bid is the highest yielding bona fide bid (determined net of any broker’s fees).

(4) *Fees Paid.* The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) *Records.* The Trustee retains the following records with the bond documents until four years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid by the City or Trustee for the Guaranteed Investment Contract, including a record of any administrative costs paid by the City or Trustee, and the certification as to fees paid, described in paragraph 4(d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted

bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(E) **Other Investments.** If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment will be received from persons with no financial interest in the Bonds (e.g., as underwriters or brokers); and

(2) the Yield on the Investment will be equal to or greater than the Yield offered under the highest bid.

Section 4.4. Certain Gross Proceeds Exempt from the Rebate Requirement.

(a) **General.** A portion of the Gross Proceeds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds and will not otherwise affect the application of the investment limitations described in **Section 4.2**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.5** applies even if a portion of the Gross Proceeds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from Rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.5**.

(b) Applicable Spending Exceptions.

(1) The two-year spending exception is unavailable for the Bonds because the Financed Facilities will not be owned by the City.

(2) The following optional rebate spending exceptions can apply to the Bonds:

(A) 6-month Exception (Code § 148(f)(2)(b) and Regulation § 1.148-7(c))

(B) 18-month Exception (Regulation § 148-7(d)).

(c) **Special Elections Made with Respect to Spending Exception Elections.** No special elections are being made in connection with the application of the spending exceptions.

(d) **Bona Fide Debt Service Fund.** To the extent that the Sinking Funds in the aggregate qualify as a Bona Fide Debt Service Fund, investment earnings in those accounts cannot be taken into account in computing arbitrage rebate.

(e) **Documenting Application of Spending Exception.** At any time prior to the first Computation Date, the City may engage the Rebate Analyst to determine whether one or more

spending exceptions has been satisfied, and the extent to which the City must continue to comply with **Section 4.5** hereof.

(f) **General Requirements for Spending Exception.** The following general requirements apply in determining whether a spending exception is met.

(1) Using Adjusted Gross Proceeds to pay principal of any Bonds is not taken into account as an expenditure for purposes of meeting any of the spending tests.

(2) The six-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent within six months following the issue date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six month period, so long as this amount is spent within one year of the Issue Date.

(3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the of the Bonds are spent in accordance with the following schedule:

Time Period After the Issue Date	Minimum Percentage of Adjusted Gross Proceeds Spent
6 months	15%
12 months	60%
18 months (final)	100%

(4) **[Reserved].**

(5) For purposes of applying the 18-month and 2 year spending exceptions only, the failure to satisfy the final spending requirement is disregarded if the City uses due diligence to complete the Financed Facilities and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000. No such exception applies for any other spending period.

(6) For purposes of applying the 18-month and 2 year spending exceptions only, the Bonds meet the applicable spending test even if, at the end of the final spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months (in the case of the 18-month exception) or 3 years (in the case of the 2-year spending test) after the Issue Date.

(g) **Small-Issuer Exception From Rebate.** The Bonds are not exempt from rebate under the small-issuer exception of Code § 148(f)(4)(D), because the Bond proceeds will not be used for local government activities of the City.

Section 4.5. Computation and Payment of Arbitrage Rebate.

(a) **Computation of Rebate Amount.** The Trustee will provide the Rebate Analyst investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the City, and not later than ten days following each Computation Date. The City will provide the Rebate Analyst with copies of investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each investment report provided to the Rebate Analyst will contain a record of each investment, including (a) purchase date, (b) purchase price, (c) information establishing the fair market value on the date such investment was allocated to the Bonds, (d) any accrued interest paid, (e) face amount, (f) coupon rate, (g) frequency of interest payments, (h) disposition price, (i) any accrued interest received, and (j) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee, the City together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. The City will, within 55 days after such Computation Date, pay to the Trustee the rebate amount.

(b) **Rebate Payments.** Within 60 days after each Computation Date, the Trustee will pay (but solely from money in the Rebate Fund or provided by the City) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment will be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service
Ogden Submission Processing Center
Ogden, UT 84201

Section 4.6. Successor Rebate Analyst. If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if either the City desire that a different firm act as the Rebate Analyst, then the City (so long as no event of default hereunder or under the Indenture has occurred and is continuing), with the written consent of the City (which consent will not be unreasonably withheld) or the City, by an instrument or concurrent instruments in writing delivered to the Trustee, the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and neither the City nor the City appoints a qualified successor Rebate Analyst within thirty (30) days following a request to appoint a successor Rebate Analyst, then the Trustee will appoint a firm to act as the successor Rebate Analyst.

Section 4.7. Rebate Report Records. The Trustee will retain copies of each arbitrage rebate report and opinion until four years after the later of the final redemption of the Bonds or any bonds issued to refund the Bonds.

Section 4.8. Filing Requirements. The Trustee and the City will file or cause to be filed with the Internal Revenue Service such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel addressed and delivered to such parties.

Section 4.9. Survival after Defeasance. Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Tax Agreement. This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

Section 5.2. Amendments. This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondholders, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended, the Indenture and the Loan Agreement, such amendment will not cause any Bond to be an arbitrage bond under Code § 148 or otherwise cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the City, the Developer and the Trustee receive an Opinion of Bond Counsel that such amendment will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

Section 5.3. Opinion of Bond Counsel. The City, the Developer and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel to the effect that the proposed deviation will not adversely affect the validity of the Bonds or cause an Event of Taxability to occur. The City (to the extent within its power or direction), the Developer and the Trustee further agree to comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

Section 5.4. Reliance. In delivering this Tax Agreement the City, the Developer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. The certifications, representations and agreements contained in this Tax Agreement are those of the City, and the Developer and the

Trustee are relying on the City with respect to them. Neither the City, the Developer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of the City or the Developer and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable.

Section 5.5. Severability. If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Section 5.6. Benefit of Agreement. This Tax Agreement is binding upon the City, the Trustee and the Developer and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture or the Bonds, express or implied, gives to any Person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement. The certifications and representations made in this Tax Agreement and the expectations presented in this Tax Agreement are intended, and may be relied upon, as a certification of an officer of City given in good faith described in Regulations § 1.148-2(b)(2). The Developer understands that its certifications in this Tax Agreement and in its Closing Certificate will be relied upon by the City in the issuance of the Bonds and execution of this Tax Agreement. The City and the Developer understand that such certification will be relied upon by the law firm of Kutak Rock LLP, in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

Section 5.7. Default; Breach and Enforcement. Any misrepresentation of a party contained in this Tax Agreement or any breach of a covenant or agreement contained in this Tax Agreement is an event of default under this Tax Agreement. This Tax Agreement is defined as a “Financing Document” in the Indenture, and remedies for an event of default under this Tax Agreement may be pursued pursuant to the terms of the Indenture or any other document which references this Tax Agreement and gives remedies for an event of default there under.

Section 5.8. Record Keeping Responsibilities. The Trustee and the City recognize (i) that investors purchase the Bonds with the expectation that interest on the Bonds is excluded from gross income for federal income tax purposes (ii) that the tax-exempt status of interest on the Bonds depends on the accuracy of the representations and the satisfaction of the covenants contained herein by the City, many of which relate to matters that will occur after the date the Bonds are issued, and (iii) that as part of its ongoing tax-exempt bond audit program the Internal Revenue Service requires that records be created and maintained with respect to the following matters

- (a) Documentation evidencing expenditure of Bond proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.
- (b) Documentation evidencing use of bond financed property by public and private persons (i.e., copies of Management Agreements or research agreements).
- (c) Documentation evidencing all sources of payment or security for the Bonds.

(d) Documentation pertaining to any investment of Bond proceeds (including the purchase and sale of securities, SLGs subscriptions, actual investment income received from the investment of proceeds, guaranteed investment contracts, and (if required) rebate calculations).

In addition to the record-keeping duties specifically undertaken by the Trustee, the City has procedures in place or will establish procedures to create and retain these records or to cause these records to be created and retained. Unless otherwise specifically instructed in a written opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the City shall retain and maintain these records until four years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

Section 5.9. Execution in Counterparts. This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

Section 5.10. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State of Kansas.

[Remainder of page intentionally left blank.]

THE PARTIES TO THIS TAX AGREEMENT have caused this Tax Compliance Agreement to be duly executed by their duly authorized officials and officers as of the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

(SEAL)

ATTEST

Marian Cook
City Clerk

DRAFT

THE PARTIES TO THIS TAX AGREEMENT have caused this Tax Compliance Agreement to be duly executed by their duly authorized officials and officers as of the day and year first above written.

OAK PARK MALL, LLC

By: CBL & Associates Limited Partnership
Manager

By: CBL Holding I, Inc.
General Partner

By: _____

DRAFT

THE PARTIES TO THIS TAX AGREEMENT have caused this Tax Compliance Agreement to be duly executed by their duly authorized officials and officers as of the day and year first above written.

UMB BANK, N.A.

By: _____
Assistant Vice President

DRAFT

EXHIBIT A
IRS FORM 8038-G

DRAFT

EXHIBIT B

DESCRIPTION OF FINANCED FACILITIES

The general nature of the Financed Facilities is to improve, construct, reconstruct, maintain, restore, replace, renew, repair, install, furnish, equip, or extend any streets, roads, highway access roads, interchanges, intersections, signings, signalization, or any other transportation-related project or infrastructure.

The components of the Financed Facilities are generally described as:

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EXHIBIT C
BOND YIELD

See Attached

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