

BLUHAWK DEVELOPMENT AGREEMENT

THIS BLUHAWK DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of April, 2013 (the "Effective Date") by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and DMP 159/69 LLC, a Kansas limited liability company, KAP 159/69 LLC, a Kansas limited liability company, LBK 159/69 LLC, a Kansas limited liability company, and JEP 159/69 LLC, a Kansas limited liability company (collectively, the "Developer").

RECITALS:

A. The Developer is the owner of certain real property which is located in the City and is bounded on the North by 159th Street, on the East by U.S. Highway 69, on the South by 167th Street and on the West by Antioch Road, a general boundary map of which is set forth on **Exhibit A** attached hereto (the "Overall Project Site").

B. The Developer wishes to develop the Overall Project Site and therefore wishes to design, develop and construct certain new facilities on the Overall Project Site as more particularly set forth in Section 2.01 below (the "Overall Project"), a portion of which constitutes the "TDD Project" (as more particularly described in Section 2.01 below).

C. The Developer and City understand and agree that the Overall Project, including the TDD Project, are dependent on the construction of the Interchange and will not be constructed in the absence of the Interchange.

D. The City has the authority to create a transportation development district ("TDD") pursuant to K.S.A. 12-17,140 *et seq.*, as amended from time to time (the "Act") for the purpose of financing certain transportation-related projects. Under the Act, the owners of the land within the boundaries of a proposed TDD may petition the City to request the creation of a TDD and to impose special assessments and/or TDD sales taxes ("TDD Sales Tax") to pay for or reimburse the costs of a portion of a TDD project.

E. On or about March 15, 2013, the Developer submitted a petition (the "TDD Petition") to the City requesting the formation of a TDD encompassing a portion of the Overall Project Site (the "District"), a legal description of which is set forth on **Exhibit D-1** and the boundaries of which are depicted on **Exhibit D-2** attached hereto. A copy of the TDD Petition is attached hereto as **Exhibit C**.

F. On April 15, 2013, the City approved the creation of the District through the passage of Ordinance No. TDD-3000 (the "TDD Ordinance") pursuant to the Act. As contemplated in the TDD Petition, the TDD Ordinance calls for the imposition of a TDD Sales Tax of 1.0% within the District to be used to pay for and/or reimburse certain TDD Project Costs (as defined in Section 4.01 below). The TDD Ordinance specifies that the TDD Sales Tax is to commence on July 1, 2015, or any other effective date that the City may approve by ordinance if a change in the effective date is requested in writing by all owners of record in the District, except that if Developer requests an effective date that is later than July 1, 2016, concurrence of

the Secretary of KDOT (the "Secretary") shall also be required. The TDD Ordinance is attached hereto as **Exhibit E**.

G. In connection with the TDD Project, Developer has committed to the conveyance and transfer of a portion of the Overall Project Site (constituting approximately five (5) acres) to the City that the City currently intends to develop as a public safety facility, which may include without limitation, a fire station, as more particularly set forth in Section 2.03(a) below.

H. The parties agree that the TDD Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the parties wish to enter into this Agreement to provide the necessary financing for the TDD Project.

AGREEMENT

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

Section 1.01. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement which are not otherwise defined herein shall have the meanings set forth in the Annex of Definitions attached hereto.

Section 1.03. 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:

(a) The terms defined in the attached Annex of Definitions include the plural as well as the singular.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

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

Section 1.04. Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation of this Agreement.

ARTICLE II. DEVELOPMENT OF THE TDD PROJECT

Section 2.01.

(a) Development of the TDD Project. The City and Developer hereby agree that the TDD Project consists of the development of the District, which includes the TDD Improvements (as defined in Section 2.04 hereof) and the other components of the TDD Project described herein and as set forth on the project description and drawings attached hereto and incorporated by reference herein as **Exhibit F**. Developer hereby contemplates that all buildings, parking structures and other improvements constituting the TDD Project, as set forth on **Exhibit F**, shall be developed, constructed, completed, and operated within the District in substantial accordance and compliance with the terms and conditions of this Agreement and the Development Plan. On and subject to the terms and provisions set forth in this Agreement, and unless otherwise provided in this Agreement, Developer shall have the sole right to, and shall be responsible for, design, development, construction, equipment and completion of the TDD Project, and shall operate and use the TDD Project in the manner described herein, all in accordance with the terms of this Agreement and all other Applicable Laws and Requirements. The parties further agree that, subject to any changes to the Development Plan, the "TDD Project" shall include the following:

(i) Retail Space. Approximately 1,000,000 square feet of mixed use retail shopping, which may include, among other concepts, a grocery store, drug store, neighborhood services and offerings, specialty and boutique shops, restaurants, entertainment and other retail concepts.

(ii) The Project shall include surface parking improvements (and may include structured parking improvements) (the "Parking Improvements") containing the number of spaces required by the Applicable Laws and Requirements for the floor space of any of the Project.

(iii) Developer recognizes, stipulates and agrees that its identification signs, directional and way-finding signs, building signs and other signage shall be subject to all Applicable Laws and Regulations, and any special use permits

granted by the City. Developer shall also develop sign criteria for the entire District.

(iv) The TDD Project shall include the design, development and construction and completion of certain infrastructure improvements, including without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, drives and other pedestrian and vehicular thoroughfares within the District (the "Infrastructure Improvements").

The TDD Project described in this Section 2.01(a) shall not be materially amended or modified without (i) the prior written consent of the City, which consent shall not be unreasonably withheld and shall be granted so long as the proposed amendment is consistent with the general spirit and intent of this Section 2.01(a) and the balance of this Agreement, (ii) full compliance with all Applicable Laws and Regulations, and (iii) written notice to KDOT of any such material modifications.

(b) Development of the Remainder of the Overall Project. Although Developer is not obligated under this Agreement to develop and construct the portions of the Overall Project other than the TDD Project, the Developer intends to develop and construct such remaining portions of the Overall Project. Excepting the TDD Project, the Overall Project, in addition to certain parking facilities and other infrastructure, generally consists of:

(i) Hospital Facilities. A medical center campus designed, developed constructed and operated by Shawnee Mission Medical Center on an approximately 40-acre portion of the Overall Project Site, including a hospital and other related facilities and improvements.

(ii) Office Space. Approximately 65,000 square feet of general office and medical office space (in addition to any medical office included as part of the medical center campus described in Section 2.01(b)(i) above).

(iii) Multi-Family Residential. Approximately 350 residential units, including apartments and approximately 51 for-sale "pinwheel" residential units.

(iv) Single-Family Residential. Approximately 128 single-family homes.

Section 2.02. Phasing of TDD Project. The parties agree that the TDD Project shall be constructed in multiple phases (each a "Phase" or collectively "Phases"). The anticipated scope and timing of each Phase is set forth on Exhibit H attached hereto. The timing for commencement and completion of each Phase as set forth on Exhibit H is subject to the provisions set forth in Section 2.06 hereof, including the Developer's right to appear before the City to show cause why Developer fails to meet the Performance Milestones set forth in Exhibit H, as more fully addressed in said Section 2.06.

Section 2.03. Public Improvements. The parties hereby understand and agree that the City shall construct, or cause to be constructed, the following public improvements (the "Public Improvements") in connection with the TDD Project, as more particularly set forth below:

(a) Public Safety Site. The obligations of the City under this Agreement are expressly conditioned upon the Developer's conveyance of that certain 5.3 acre tract of land ("Public Safety Site") as legally described in Exhibit B-1 and as depicted on Exhibit B-2 attached hereto, which Public Safety Site is anticipated to be developed by the City for the construction of, and use as, a public safety facility (subject to the restrictions set forth in Section 10.06(a) hereof). The Closing on the Public Safety Site shall occur on or before the Closing Date set forth in Section 10.01 hereof.

(b) U.S. 69 Interchange.

(i) Design and Engineering Plans. Immediately following the Closing, the City, at its sole cost and expense, shall cause the preparation of preliminary design and engineering plans for a new interchange for 159th Street and U.S. Highway 69 (the "Interchange") with a deadline for completion of such plans of May 1, 2014.

(ii) Right-of-Way Acquisition. In addition to the right-of-way, permanent easements and temporary easements to be dedicated and delivered by the Developer pursuant to Stipulation 2(m) of the Ordinance No. Z-3346 adopted by the governing body of the City on June 2, 2008, the parties agree that any land or access rights necessary for the construction of the Interchange (the "Interchange Right-of-Way") shall be obtained by the City by condemnation or acquisitions in lieu of condemnation. The condemnation awards or purchase price paid by the City for such Interchange Right-of-Way shall be reimbursed by Developer and such costs shall be an Eligible Expense hereunder. No later than thirty (30) days after Developer's receipt of written notice from the City of its intent to initiate the process of acquiring the Interchange Right-of-Way, Developer shall deposit with the City Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from which the City may withdraw funds as and when necessary for land acquisition costs; provided however, that such amount shall not in any way be construed as the maximum amount for which Developer is required to reimburse the City as provided in this Section 2.03(b). In the event a condemnation award is challenged, all costs and expenses (including the City's attorney's fees) of the City to participate in or defend any such challenge shall be reimbursed by Developer. Developer shall reimburse the City within thirty (30) days after Developer receives written request for such reimbursement from the City, along with sufficient documentation of all such costs and expenses.

(iii) KDOT Agreement. Contemporaneously with the execution of this Agreement, the City and the Kansas Department of Transportation ("KDOT") have entered into an agreement (the "KDOT Agreement") which provides for, among other things: (i) the reimbursement by KDOT of the City's costs and expenses arising out of the construction of the Interchange, and (ii) the

reimbursement of KDOT for such costs and expenses from the first \$11,000,000 of Pay-As-You-Go TDD Financing, which such costs and expenses shall be deemed an Eligible Expenses hereunder.

(iv) Construction. The City shall commence solicitation of bids for construction of the Interchange on or before the later of (x) fifteen (15) business days after satisfaction of KDOT's condition set forth in Article IV, Section 4(c) of the KDOT Agreement, or (y) July 1, 2014. The City shall diligently pursue the bid solicitation process, followed as soon as practicable by the construction process, until the Interchange is complete. The City will complete the Interchange on or before December 31, 2015, subject to Excusable Delays (the "Interchange Completion Date").

(v) Delays in Interchange Completion. In the event that the City shall fail to complete the Interchange on or before the Interchange Completion Date for any reason whatsoever (other than (i) an Excusable Delay, or (ii) a failure of Developer to timely meet the Retail Phase 1 Performance Milestone set forth on Exhibit H for any reason, or (iii) a default of Developer in its other obligations hereunder), the parties hereby understand and agree that Developer shall, as its sole and exclusive remedy, be entitled to one (1) day of delay on each of the Performance Milestones set forth on Exhibit H attached hereto (other than the Retail Phase 1 Performance Milestone) for each day after the Interchange Completion Date until the Interchange is completed. The parties agree that Exhibit H shall be amended in writing by the parties after the completion of the Interchange to reflect any such delays, and Developer understands and agrees that such day-for-delays as set forth in this subsection shall be Developer's sole and exclusive remedy for any failure of the City to meet the Interchange Target Completion Date or any other target dates set forth in this Section 2.03(b).

(vi) KDOT Delays. The City's deadlines to design the Interchange, commence bid solicitation, commence construction, and complete construction, shall be subject to Excusable Delay, as well as to any delays caused by KDOT's process of approving the design or bid solicitation related to the Interchange.

(vii) Signalization of Ramps. The Parties hereby agree that Developer's obligation to make payment to the City to assist with funding of signalization of the highway ramps that will be constructed as part of the Interchange, as set forth in Stipulation 2(p)(1) and 2(p)(2) of Ordinance Z-3346 passed by the City's governing body on June 2, 2008, has been satisfied in full. Except as set forth in the preceding sentence, Developer agrees that it will remain fully obligated to make payments to pay for the other signalization required by the balance of Stipulation 2(p).

(c) 164th Street and Antioch Road.

(i) Design and Engineering Plans. The City shall cause the design and engineering plans to be prepared for the construction of 164th Street from Antioch

Road, which shall include construction of a modified turn lane onto 164th Street from Antioch Road and a four-way traffic signal on Antioch Road to 164th Street (collectively, the "164th Street Improvements"). The City and Developer shall mutually agree to the grading, road profile and location of curb cuts to be located on 164th Street. 164th Street shall generally follow the existing topography and shall be developed to the east boundary line of the Public Safety Site. The City shall follow its normal procurement and purchasing procedures in its selection of parties to provide both design and construction of the improvements described in this Section 2.03(c). The design and construction costs for the 164th Street Improvements shall be shared equally between the City and Developer (except as set forth in Section 2.03(c)(iii) below) and all such costs that are paid by Developer or reimbursed to the City by Developer shall be an Eligible Expense hereunder. Developer's payment of half of the design and construction costs under this Section 2.03(c)(i) shall be deemed to have satisfied Developer's obligation to make payment to the City for signalization of the North BV School Drive & Antioch Road as set forth in Stipulation 2(o) of Ordinance No. Z-3346 passed by the City's governing body on June 2, 2008. Except as set forth in the preceding sentence, Developer agrees that it will remain fully obligated to make payments to pay for the other signalization required by the balance of Stipulation 2(o).

(ii) Timing of Design and Construction. The City shall commence and complete its design and construction obligations with respect to the 164th Street Improvements on a schedule to be determined by the City in its sole discretion; provided, however, in the event that Developer determines that it requires said design and construction work to be completed prior to the City's intended commencement of the same, Developer may deliver written notice of such requirements to the City and the City, within thirty (30) days of receiving Developer's notice, shall notify Developer in writing as to which of the following two options it has selected in its sole discretion: (i) to meet Developer's stated design and construction schedule; or (ii) allow Developer to undertake said design and construction obligations, with all such costs to be shared equally between the City and Developer and such costs that are incurred by Developer shall be an Eligible Expense hereunder. If the City elects to meet Developer's construction schedule but fails to timely complete construction the 164th Street Improvements, then Developer shall be entitled to the self-help rights set forth in Section 2.03(c)(iii) below.

(iii) Developer's Self-Help Rights. If Developer has reason to believe that the 164th Street Improvements are not being designed and/or constructed in accordance with the agreed-upon schedule for the 164th Street Improvements, then Developer shall have the right to notify the City of such alleged default. Upon written notice to the City of such alleged default, and if the City does not cure such failure within thirty (30) days of such notice, then Developer shall, as its sole and exclusive remedy, have the right, but not the obligation, to take over and perform the 164th Street Improvements by written notice to the City of its election to exercise its self-help rights. If Developer undertakes such design and

construction obligations for the 164th Street Improvements, then Developer hereby understands and agrees that Developer shall be solely responsible for any increase in costs for the design and/or construction of the 164th Street Improvements resulting from the exercise of such self-help rights, including without limitation, any damages or expenses related to the termination of the City's contracts for the 164th Street Improvements. If Developer takes over design and construction, Developer must comply with the stated design and construction schedule and the City shall have the same enforcement rights provided above to the Developer with respect to the Developer's failure to meet the schedule. Compliance by the City or Developer, as applicable hereunder, with the stated design and construction schedule, shall be subject to Excusable Delay.

(iv) Reimbursement of Each Party's Cost Share. Any costs incurred by the City or Developer under this subsection shall be reimbursed to the other party within sixty (60) days of written notice to the other party, which shall include sufficient documentation of such costs incurred.

Section 2.04. TDD Project. Except as otherwise provided for herein and subject to the terms and conditions of this Agreement, Developer shall be responsible for funding the costs to design, develop and construct the TDD Project (except for the Interchange), including that portion of the TDD Project that constitutes the "TDD Improvements." The TDD Project, including the TDD Improvements, and the estimated costs thereof, are set forth in **Exhibits F and G.** Subject to the TDD Cap, the costs of the TDD Improvements (except for the Interchange) may be reimbursed to Developer as set forth in Article V below.

Section 2.05. Relationship of the City and Developer. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City.

Section 2.06. Project Timing – Milestones. Subject to (i) any day-for-day delays resulting from a failure of the City to meet the Interchange Completion Date as set forth in Section 2.03(b), and/or (ii) any Excusable Delays as set forth in Section 9.07 hereof, Developer hereby agrees to construct the TDD Project based upon the schedule set out and contained within **Exhibit H,** the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit H,** then the City will provide written notice of such failure to KDOT and may require Developer to appear before the City to show cause why Developer failed to comply with the Performance Milestones. If Developer cannot show cause for the delay which is reasonably satisfactory to the City, such reasonable cause to include adverse market conditions and/or the inability to get financing, then the City may exercise its rights and remedies as set forth in Section 9.04 herein. In the event the Developer shows cause for a delay that is reasonably satisfactory to the City, the Performance Milestones shall be adjusted accordingly by the City in order to reflect Developer's adjusted Performance Milestones going forward.

Section 2.07. Indemnification. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (each, a "City Indemnified Party" and collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses,

including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the District by Developer; (ii) the management, design, construction, development and completion of the TDD Project, including the TDD Improvements, by the Developer; (iii) the use or occupation of the TDD Project or District by Developer or anyone acting by, through or under the Developer; (iv) damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on or relating to the TDD Project or the District; (vii) any act by an employee of the City at or on the TDD Project which is within or under the control of the Developer or pursued at Developer's request for the benefit of or on behalf of the Developer; (v) the Developer's actions and undertaking in implementation of the TDD Project or this Agreement; (vi) any breach of representation or warranties by Developer, including without limitation, those set forth in Section 10.03 hereof, and (vii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor. The parties further agree as follows:

(a) This section shall not apply to negligence or willful misconduct of the City or any City Indemnified Parties.

(b) In no event shall the Developer's indemnification obligations set forth in this Section be interpreted to apply to the Public Safety Site or any transaction, construction, operations or other activities of the City or any City Indemnified Parties on or from the Public Safety Site; design or construction of the Interchange; acquisition of land or access rights in furtherance of construction of the Interchange, including without limitation any condemnation proceedings; design and construction of 164th Street, to the extent oversight and management of such design and construction are undertaken by the City.

(c) This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.), (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, and any other Applicable Laws and Requirements within the District. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify the City from liability.

(d) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, the City Indemnified Party shall give prompt written notice to Developer of the occurrence of such event. The failure to notify the Developer shall not relieve Developer of any liability that it may have to a City Indemnified Party; provided however that the City hereby agrees that it shall not defend, settle or otherwise resolve any such Actions

without prior written notice to Developer. After receipt of such notice, Developer may elect to defend, contest or otherwise protect a City Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel approved by a City Indemnified Party. The City Indemnified Party shall have the right, but not the obligation, to participate, at the City Indemnified Party's own cost and expense, in the defense thereof by counsel of the City Indemnified Party's choice. In the event that Developer shall fail to timely defend, contest or otherwise protect a City Indemnified Party against such Action, the City Indemnified Party shall have the right to do so, and (if such defense is undertaken by the City Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest or otherwise protect against such Action), the City Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer and, within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the City Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(e) A City Indemnified Party shall submit to Developer any settlement proposal that the City Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the City Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(f) Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce the City to enter into this Agreement. To the fullest extent permitted by law, a City Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the City Indemnified Party in payment of the damages suffered by it, as is necessary to protect the City Indemnified Party from loss. If such court action is successful, the City Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(g) The right to indemnification set forth in this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

Section 2.08. Insurance.

(a) Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the Term, maintain or cause to be maintained insurance with respect to the TDD 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 are adequate to protect the Developer and the TDD Project which amounts shall not be less than those set forth on **Exhibit K** attached hereto. Throughout the Term, the Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance listing all coverages applicable to the TDD Project.

(b) The Developer shall require of the contractor(s) hired to perform work on any public infrastructure within the District to fully comply with the following insurance requirements:

(i) General: The contractor shall secure and maintain, during the period of such work, insurance (on an occurrence basis unless otherwise agreed by the City and Developer) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on Acord forms 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 of insurance.

(ii) 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.

Developer shall also cause the contractor to monitor and to promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate of insurance 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 cause the contractor to promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

(iii) 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) Broad Form Contractual / Contractually Assumed Liability

(3) Independent Contractors

(4) Broad Form Property Damage

(5) **NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"**

(iv) 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"

(v) 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

(vi) 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

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

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

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

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

(1) Require each contractor to 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 above.

Whichever option is chosen, Developer shall cause the contractor to 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.

Section 2.09. Non-Discrimination. The Developer agrees that throughout the Term:

(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 City, with prior notice to the Secretary;

(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 City, with prior notice to the Secretary; and

(e) The Developer shall include the provisions of Sections 2.09(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

The Developer further agrees that throughout the Term, 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 the TDD Project.

**ARTICLE III.
Intentionally Omitted**

**ARTICLE IV.
TDD FINANCING**

Section 4.01. Source of Funds. The costs of the TDD Project (the "TDD Project Costs") will generally be funded by private equity and debt ("Private Funds"). Subject to the terms and conditions of this Agreement, the TDD Improvement Costs shall be reimbursed in part with TDD Sales Tax proceeds. Reference is hereby made to the TDD Improvement Costs which are more particularly set forth on **Exhibit G** attached hereto. Developer, using Private Funds, will initially advance all of the costs for the design, development and construction of the TDD Improvements (excluding the Interchange). Subject to the terms and conditions of this Agreement, including without limitation, (a) the TDD Cap set forth in Section 4.04 below, (b) the TDD Administrative Fee and (c) KDOT's rights to the first \$11,000,000 of the TDD Sales Tax proceeds as set forth in Section 4.05(a) below, Developer shall be reimbursed for Eligible Expenses from and to the extent of the TDD Sales Tax proceeds collected during the Term.

Section 4.02. TDD Sales Tax. The City hereby agrees that, subject to the TDD Cap, the Eligible Expenses incurred by Developer may be financed and reimbursed with Pay-As-You-Go TDD Financing, and payable from revenues received from the imposition of a TDD Sales Tax in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers' Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the District. Developer agrees to provide to the Kansas Department of Revenue (the "DOR") a list of tenants within the District within the timeframes required by the DOR, so that the DOR can notify tenants within the District of their requirement to collect a TDD Sales Tax beginning on that certain date which is set forth in Recital F of this Agreement. At the time the list of tenants is provided to the DOR, the Developer shall also provide a copy to the City and the Secretary.

Section 4.03. TDD Sales Tax Fund. During the Term, all TDD Sales Tax proceeds generated within the District and received by the City from the DOR shall be deposited into the TDD Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Agreement.

Section 4.04. Pay-As-You-Go TDD Financing. The parties hereby agree that the proceeds from the TDD Sales Tax shall be disbursed by the City quarterly from the TDD Sales Tax Fund on a pay-as-you-go basis ("Pay-As-You-Go TDD Financing"), to pay KDOT and/or reimburse the Developer for Eligible Expenses, if and to the extent that (i) there are TDD Sales

Tax proceeds in the TDD Sales Tax Fund, (ii) Developer has fully satisfied all of the conditions as set forth in Section 4.05, (iii) the Term has not yet expired, and (iv) Developer has not already been reimbursed for Eligible Expenses in an amount equal to the TDD Cap (as defined below), and Developer is not in default under the terms and conditions of this Agreement. The parties further agree as follows:

(a) Developer hereby acknowledges and agrees that the City shall have certain obligations to KDOT pursuant to the KDOT Agreement, including among other things, that the City has pledged and agreed to distribute the first Eleven Million and 00/100 Dollars (\$11,000,000.00) received into the TDD Sales Tax Fund to KDOT for reimbursement of KDOT's expenses arising out of the design, construction and completion of the Interchange. Developer also acknowledges and agrees that the City has agreed and shall be obligated to distribute the first Eleven Million and 00/100 Dollars (\$11,000,000.00) of the TDD Sales Tax proceeds to KDOT for KDOT's costs related to the Interchange pursuant to the terms and conditions of the KDOT Agreement (the "KDOT Payment"). Further, Developer hereby understands and agrees that Developer shall not be entitled to any reimbursement from Pay-As-You-Go Financing whatsoever unless and until KDOT is fully reimbursed as set forth herein.

(b) Following full satisfaction of the KDOT Payment, and the TDD Administrative Fee, the TDD Sales Tax available to Developer for reimbursement of Eligible Expenses shall in no event exceed Twenty-One Million Dollars (\$21,000,000.00) (the "TDD Cap"). The TDD Cap shall, for all purposes set forth herein, operate as a cap on the use of TDD Sales Tax for reimbursement of any and all Eligible Expenses including without limitation, any construction period interest on Eligible Expenses prior to reimbursement thereof. Once Developer has received an amount equal to the TDD Cap for reimbursement of Eligible Expenses through Pay-As-You-Go TDD Financing, the parties understand and agree that the TDD shall thereafter terminate, and the TDD Sales Tax shall terminate and no longer be levied or collected within the District.

(c) The TDD Sales Tax shall be collected within the District for a period that commences on the date that the TDD Sales Tax is first imposed within the District up to and concluding upon that date which is the earlier of the following: (i) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TDD Financing (up to the TDD Cap), or (ii) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty-two (22) years from the date that the TDD Sales Tax is first imposed (the "TDD Collection Period"). At the end of the TDD Collection Period, the parties understand and agree that the TDD shall thereafter terminate, and the TDD Sales Tax shall terminate and no longer be levied or collected within the District.

(d) Developer shall not receive any reimbursements from Pay-As-You-Go TDD Financing unless and until the conditions precedent set forth in Section 4.05 have been fully satisfied as determined by the City in its sole reasonable discretion.

Section 4.05. Conditions Precedent to Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for Eligible Expenses from Pay-As-You-

Go TDD Financing, unless and until the conditions precedent set forth below have been fully satisfied as determined by the City in its sole reasonable discretion:

- (a) The City shall have accepted title to the Public Safety Site as provided in this Agreement;
- (b) The costs and expenses for which Developer seeks reimbursement must in all events be Eligible Expenses;
- (c) In accordance with Section 5.02 hereof, the City has approved Certificates of Expenditure for such TDD Improvements;
- (d) Developer shall be in full compliance with the terms and conditions of this Agreement; and
- (e) Developer shall not be entitled to any reimbursement unless and until KDOT is fully paid the KDOT Payment as set forth in Section 4.04(a) hereof.

Section 4.06. No TDD Bonds. Developer hereby understands and agrees that all reimbursements to the Developer hereunder shall be made only from Pay-As-You-Go TDD Financing, and nothing in this Agreement shall in any way obligate the City to issue bonds or other obligations to reimburse Developer for the Eligible Expenses or any other costs of the TDD Project.

Section 4.07. Payment of TDD Administrative Fee. As and when there are sufficient TDD Sales Tax revenues from the District to pay the TDD Administrative Fee, Developer hereby understands and agrees that such TDD Administrative Fee shall have first priority to available funds in the TDD Sales Tax Fund.

ARTICLE V. TDD REIMBURSEMENT

Section 5.01. TDD Reimbursement. Subject to Article IV of this Agreement, and subject to the priority of the KDOT Payment, TDD Sales Tax shall be used to reimburse the Developer for the Eligible Expenses, including the TDD Improvements Costs as estimated in **Exhibit G**, by Pay-As-You-Go TDD Financing, and in all events in accordance with the terms of this Agreement. In no event will the reimbursement described hereunder exceed the TDD Cap.

Section 5.02. Certificate of Expenditures. In connection with the Eligible Expenses for the TDD Improvements, Developer shall certify all costs and expenditures in accordance with the following:

- (a) The Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as **Exhibit I** 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 Certificate of Expenditure submitted by Developer to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Additionally, Developer shall require that no transferee, purchaser, or

lessee of any portion of the District otherwise provide Certificates of Expenditures to the City, except through Developer or except as otherwise approved by the City.

(b) Each Certificate 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 and storm sewer).

(c) The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certificate 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 third party expenses incurred by the City pursuant to this subsection (c).

(d) The City shall have sixty (60) calendar days after receipt of any Certificate of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certificate of Expenditure directly relates to the TDD Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement; and (4) all conditions set forth in Section 4.05 hereof have been satisfied; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certificate of Expenditure and reimburse the Developer for financing the cost of the TDD Improvements pursuant to the terms of this Agreement. If the City disapproves of the Certificate of Expenditure, the City shall notify the Developer in writing of the specific reason(s) for such disapproval within such sixty (60) day period. If the City determines that a deficiency in the Certificate of Expenditure applies to less than all expenses set forth thereon, the City shall timely approve that portion of the Certificate of Expenditure costs to which the deficiency does not apply. With respect to any costs that are disapproved, Developer shall then have the opportunity to resubmit a Certificate of Expenditure relating to such costs and the City shall review and respond to the Developer pursuant to this subsection within thirty (30) days.

(e) During the Term, the Developer shall endeavor to submit Certifications of Expenditures for those expenditures made in connection with the TDD Improvements on at least a quarterly basis, and shall submit a Certificate of Expenditures for any expenditure made in connection with a TDD Improvement within one-hundred eighty (180) days of incurring such expenditure. Notwithstanding the forgoing, Developer shall submit a Certificate of Expenditures for any such expenditure incurred prior to the Effective Date within one-hundred and eighty (180) days of the Effective Date.

ARTICLE VI. ASSIGNMENT AND TRANSFER OF AGENT'S RIGHTS

Section 6.01. Assignments by Developer. The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior

approval of the City's governing body, which approval may be granted or withheld in its sole discretion based upon the governing body's findings about whether or not the proposed assignee shall have the commercially reasonable qualifications, experience and financial responsibility which are necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the District and/or this Agreement being transferred. The City hereby understands and agrees that any approval of the City's governing body pursuant to the prior sentence shall release Developer from the obligations set forth in this Agreement. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the TDD Project, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Department of Records and Tax Administration of Johnson County, Kansas, in a timely manner following the execution of such agreements. The City shall provide written notice to the Secretary of any assignment approved by the City under this section.

Section 6.02. Successors and Assigns. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the TDD Project shall be bound by any obligation of the Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within the TDD Project except the Developer shall be entitled to any rights whatsoever or claim upon the reimbursements from the TDD Sales Tax, except as specifically authorized in writing by the Developer and the City.

Section 6.03. Excluded Encumbrances and Transfers. The foregoing restrictions on assignment, transfer and conveyance in this Article VI shall not apply to (i) any security interest granted to secure indebtedness to any construction or permanent lender; (ii) rental and leasing of portions of the District in the normal course of Developer's business to businesses whose operations fall within the uses permitted under the terms of this Agreement ("Business Operators"); (iii) the sale, conveyance or other transfer of title of portions of the District in the normal course of Developer's business to Business Operators, provided however that any such sales, transfers or conveyances shall not exceed fifty percent (50%) of the land area within the District in the aggregate without approval of the City as set forth in Section 6.01 hereof; or (iv) any transfer of the District and/or some or all of the rights and/or obligations under this Agreement to a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer (an "Affiliate"), provided that any such Affiliate shall have a net worth which is equal to or greater than that of the Developer immediately prior to such transfer. Developer hereby agrees to provide the City with written notice of any transfer permitted by this Section 6.03 within ten (10) days after such transfer.

**ARTICLE VII.
CONSTRUCTION OF IMPROVEMENTS**

Section 7.01. Construction of Improvements. Developer agrees that it shall cause the TDD Project to be constructed and completed substantially in accordance with this Agreement. In addition, the Construction Documents, and any other contracts for the design, development, acquisition, construction and completion of the TDD Project, as well as all other contracts or agreements respecting the TDD Project, shall comply and conform to all Applicable Laws and Requirements.

Section 7.02. Commencement of Construction: Subject to Section 9.07 hereof, Developer hereby agrees that Developer shall commence construction of each respective Phase of the TDD Project as set forth in the Performance Milestones attached hereto as **Exhibit H**, or at such other time as may be agreed upon by the Developer and the City in writing.

Section 7.03. Completion Dates. Subject to Section 9.07 hereof, Developer hereby agrees that Developer shall Substantially Complete construction of each respective Phase of the TDD Project on or before the completion date for such Phase as set forth in the Performance Milestones attached hereto as **Exhibit H**.

Section 7.04. Permitted Modifications. Notwithstanding any provisions of this Agreement to the contrary, Developer shall have the right, in its sole discretion, to modify the scope and physical parameters of the TDD Project (each, a "Permitted Modification") if, and to the extent, that:

- (a) Modifications are approved via the Planning Commission and/or Governing Body via the planning and zoning process or as required by Applicable Laws and Requirements; or
- (b) Modifications are required to include within the TDD Project new technologies or amenities which may become available during the time that the TDD Project is being developed; or
- (c) Modifications shall be allowed to the interior portions of the various buildings that constitute the TDD Project.

Developer agrees that any such Permitted Modification shall be consistent, and comply, with Applicable Laws and Requirements. Developer shall give to the City reasonable prior notice of any Permitted Modifications. A Permitted Modification shall not require the consent of the City.

Section 7.05. Periodic Meetings with the City. From the Effective Date until Substantial Completion of the TDD Project, Developer hereby agrees to meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than quarterly, to review and discuss the design, development and construction of the TDD Project. At any time during the Term of this Agreement, Developer hereby agrees to reasonably respond to requests for information from the

City or its representatives about the TDD Project, which shall include, without limitation, information identifying leasing or sale activities for the TDD Project.

**ARTICLE VIII.
USE AND OPERATION OF THE PROJECT**

Section 8.01. Term. The Term of this Agreement shall commence on the Effective Date and shall expire following the last day of the TDD Collection Period (the "Term").

Section 8.02. Use and Operation. Developer covenants that at all times during the Term it will, at its expense:

(a) Conduct its business at all times in a commercially reasonable manner and in conformity with the industry standards for similar facilities and in such manner as to maximize sales and/or rentals and to help establish and maintain a high quality reputation for the TDD Project.

(b) Perform its duties to maintain the TDD Project and the District as set forth in Section 8.03 hereof.

(c) Developer hereby understands and agrees that the nature of the retail uses within the District was critical to the City's creation of same. Accordingly, the parties hereby agree that the following uses shall be prohibited within the District:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the shopping center. No oil, gasoline or flammable liquid shall be stored within the District, except as approved by the City as part of a convenience store and/or gas station operation.

(ii) A car wash.

(iii) A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.

(iv) Any pawn shop or flea market.

(v) Any store selling discounted tobacco products or tobacco-smoking paraphernalia; provided that this restriction is not intended to prohibit (i) a grocery store, drug store, or other businesses where such products are sold but are not relevant business's primary source of revenue; or (ii) a first-class cigar shop or first-class, private clubs which allow the sale and consumption of tobacco products.

(vi) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located within the District.

(vii) Pay-day or title loan facilities.

(viii) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion within the District to determine its own selling prices nor shall it preclude second-hand sales or the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(ix) Any central laundry, or laundromat; provided, however, this prohibition shall not be applicable to a drop-off and pickup facility, or a central laundry or laundromat that complies with CERCLA, RCRA and other Applicable Laws and Requirements (as defined herein).

(x) Any automobile, truck, trailer or recreational vehicle with outside sales, leasing, or display unless approved by the City or in conjunction with promotions, displays and other similar marketing activities, subject, however, to compliance with all Applicable Laws and Requirements.

(xi) Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles, unless ancillary to new vehicle sales (if such new vehicle sales are entirely interior or are approved by the City under paragraph (x) hereof).

(xii) Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; except that this provision shall not be deemed to preclude the operation within the District of either a nationally or regionally recognized book store, or a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xiii) Any seasonal tax preparation facilities.

(xiv) Any precious metals facilities, except for and excluding high quality jewelry stores that purchase precious metals as an ancillary part of their business operations.

The City's governing body may grant variances to the restrictions set forth in this Section 8.02(d) from time to time in its sole and absolute discretion. Within thirty (30) days of the Effective Date, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 8.02(d) and record the same against the real property within the District, which restrictions shall be effective and run with the land for the Term of this Agreement.

Section 8.03. Maintenance and Use. During the Term, Developer shall cause the TDD Project and all other of its property used or useful in the conduct of its business and operations within the District, to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated space in the greater

metropolitan Kansas City area, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations within the District. Nothing in this Section 8.03 shall preclude Developer from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business, and as long as the same does not materially adversely affect the value of the Project or Developer's ability to (i) perform its obligations under this Agreement, or (ii) generate TDD Sales Taxes within the District. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, this Agreement, the Development Plan, and as long as the same do not materially adversely affect the value of the TDD Project or Developer's ability to perform its obligations under this Agreement, or generate TDD Sales Taxes within the District. Without limiting the generality of the foregoing, Developer hereby understands and agrees that it shall execute, deliver and fully comply with the terms and conditions of that certain Covenant to Maintain Private Parking Facilities, the form of which is attached hereto as **Exhibit J**.

Section 8.04. Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any government authorities applicable to the conduct of their business and operations and the ownership of the TDD Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any government authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings.

Section 8.05. Payment of Taxes and Liens. The Parties hereby agree as follows:

(a) During the Term of this Agreement, Developer and its Affiliates shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Developer shall fail to pay all such applicable real estate taxes and assessments, the parties understand and agree that the City may suspend all reimbursements of Eligible Expenses through Pay-As-You-Go TDD Financing during any time that such real estate taxes and assessments on the property the Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliates from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer or its Affiliates shall pay any and all amounts that are contested under protest while any such proceedings are pending. The Developer and any other owners of real property within the District shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such other owners' property within the District.

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the TDD Project or the property within the District, or the

funds in connection with any of the TDD Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made for which Eligible Expenses were incurred. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 8.06. Licenses and Permits. Developer hereby recognizes, stipulates and agrees (a) that in the design, construction, completion, use or operation of the TDD Project, Developer, or its general contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

Section 8.07. Damage or Destruction.

(a) In the event of damage to or destruction of any portion of the TDD Project resulting from fire or other casualty during the Term, the net proceeds of any insurance relating to such damage or destruction shall be paid into an account controlled by Developer's lender, if any, that has a security interest in the portion of the TDD Project that was damaged (or in the event such portion of the District is not mortgaged for the benefit of Developer's lender, then such account shall be controlled by Developer), and used in accordance with this Section of the Agreement ("Casualty Escrow").

(b) If, at any time during the Term, the Project or any part thereof shall be damaged or destroyed by a casualty (the "Damaged Facilities"), Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the casualty and shall be entitled to draw upon the Casualty Escrow for payment of said costs. Funds in the Casualty Escrow shall not be used for any purpose other than repair, restoration, and/or replacement of the Damaged Facilities until such repair, restoration, and/or replacement required by this Section is complete.

(c) Nothing in this section will require the Developer to expend funds in excess of the Casualty Escrow for the repair, restoration and/or replacement of the Damaged Facilities.

(d) Notwithstanding anything in this Section to the contrary, the parties hereby agree that:

(i) The requirement in this Section that net casualty insurance proceeds be deposited into a Casualty Escrow, and Developer's obligation to repair, restore, and replace the Damaged Facilities, shall not apply where the Damaged Facilities consisted of non-retail operations that do not generate TDD Sales Tax; and

(ii) Upon the earlier of (A) satisfaction in full of the KDOT Payment, or (B) the termination or expiration of the KDOT Agreement, this Section of the Agreement shall be of no further force or effect.

Section 8.08. Access. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the TDD Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the TDD Project. Nothing contained in this Section 8.08 shall restrict or impede the right of the City to enter the District pursuant to any Applicable Laws and Requirements.

Section 8.09. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

ARTICLE IX. DEFAULTS AND REMEDIES

Section 9.01. Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice, with a copy of such notice to the Secretary, specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected, provided that such default is fully cured in ninety (90) days in any event.

Section 9.02. Developer's Remedies Upon Default by the City.

(a) If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote, punitive or consequential damages. The City's liability hereunder shall also be limited by Applicable Laws and Requirements. In the event of such a default, Developer shall also have the right to terminate this Agreement.

(b) In the event of such default by City, the Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity.

(c) In the event that the City cannot perform its obligations hereunder as a result of cancellation, termination or a failure to perform by KDOT under the KDOT

Agreement, the parties hereby agree that (i) the City shall refund any amounts paid by Developer for right-of-way acquisition as set forth in Section 2.03(b)(ii) of this Agreement, if any, (ii) the City shall complete the design of the Interchange and pay to Developer any amount reimbursed to the City by KDOT pursuant to Article IV, Section 5(a)(4) of the KDOT Agreement, and (iii) the TDD shall be terminated and this agreement may be terminated by either party by written notice to the other.

if: **Section 9.03. Default by Developer.** Developer shall be in default under this Agreement

(a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within ten (10) days after the City has given Developer written notice specifying such default; or

(b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected, provided that such default is fully cured in ninety (90) days in any event; or

(c) Without limiting the generality of the foregoing, if Developer shall assign or transfer the TDD Project and/or this Agreement in violation of the terms and conditions set forth in Article VI, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected, provided that such default is fully cured in sixty (60) days in any event; or

(d) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Developer whereupon the District, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subsection being deemed a default under the provisions of this Agreement); or

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days of notice from the City.

Section 9.04. City's Remedies Upon Default by Developer. Upon the occurrence and continuance of a Developer default, the City shall provide notice to the Secretary and shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may (i) refuse to approve any further Certificates of Expenditures and/or make any further disbursements of TDD Sales Tax to Developer unless and until such default is cured by the Developer (which shall not affect the KDOT Payments hereunder), and/or (ii) terminate the TDD and/or the TDD Sales Tax, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement. The rights and remedies reserved by the City under this Section 9.04 shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

(b) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default, but in no event shall the Developer be liable for any remote, punitive, or consequential damages.

(c) In the event of such default by Developer, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies.

(d) Notwithstanding anything set forth herein which is seemingly to the contrary, in the event of a default by a transferee which owns a portion of the District pursuant to Section 6.01 or 6.03(ii) or (iii) hereof, the City shall not have the above-referenced remedies against the Developer, but rather, it is hereby understood and agreed that the City's recourse shall be solely against such transferee as the owner of such property and as the successor to Developer's obligations under this Agreement for that particular property. In no event shall a default by such a transferee affect the Developer's rights hereunder to collect TDD Sales Tax proceeds generated by any such transferee's portion of the District.

Section 9.05. Legal Actions.

(a) 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.

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

(c) Acceptance of Service of Process.

(i) 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.

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

Section 9.06. 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.

Section 9.07. Excusable Delays; Extension of Times of Performance.

(a) 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 events beyond the reasonable control of the party such as but not limited to: default of other party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform ("Excusable Delays").

(b) The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. Developer shall provide notice to the City if and when any such Excusable Delays occur and Developer may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. In the case of any extension sought by Developer for any other reason which will cause a failure to timely complete a portion of the TDD Project as set forth on **Exhibit H** hereto, such extension shall only be granted with the approval of the City following notice to the Secretary, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse Developer or City from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing.

ARTICLE X.
CONVEYANCE OF THE PUBLIC SAFETY SITE TO THE CITY BY DEVELOPER

Section 10.01.

(a) Agreement to Convey Property. On or before that date which is forty five (45) days after the Effective Date (the "Closing Date"), subject to the performance by the City and Developer of the terms and provisions of this Article X, Developer shall convey, assign, and transfer to the City the Public Safety Site, together with all of Developer's rights, titles, appurtenant interests, covenants, licenses, mineral rights, privileges and benefits thereunto belonging, and Developer's right, title and interest in and to any easements, right-of-way, rights of ingress or egress or other interests in, on or under any land, highway, street, road or avenue, open or proposed, in, on, across, in front of, abutting or adjoining such real property including, without limitation, any strips and gores adjacent to or lying between such real property and any adjacent real property (collectively, the "Property").

(b) The conveyance of the Property shall be subject to the restrictions set forth in the Deed as set forth in Section 10.06(a).

Section 10.02. Due Diligence. Developer shall make available to the City, for the City's review and/or copying, any and all existing surveys, and any environmental studies or impact reports relating to the Property (collectively, the "Due Diligence Materials"), within five (5) days following the Effective Date.

(a) Due Diligence Review. During that period which is thirty (30) days following the Effective Date, (the "Review Period"), the City shall have the right and opportunity to review the Due Diligence Materials delivered or made available by Developer to the City.

(b) Subdivision and Platting. The City shall, at its cost, prepare the preliminary and final plat for the Property.

(c) Title and Survey. Within fifteen (15) days after the Effective Date, Developer, at its expense, shall obtain the Title Commitment and an ALTA/ACSM survey of the Property by a registered land surveyor (the "Survey") in a form and content that is satisfactory to the City and sufficient to allow the Title Company to issue the Title Policy. The Survey shall be certified to the City and Title Company. The City shall have fifteen (15) days after its receipt of the Survey and the Title Commitment to review and provide written objections to same to Developer.

(d) Investigations. During the Review Period, the City and its agents and designees shall have the right and opportunity to examine the Property for the purpose of inspecting the same and making tests, inquiries and examinations, making soil analyses, conducting engineering studies, core borings, drillings, surveys, environmental assessments and such other physical due diligence investigations and analyses in, on and to the Property as the City deems necessary to ascertain the suitability of the Property for the intended development (collectively the "Investigations"). After any such

Investigations, the City shall restore or cause to be restored the Property to its condition immediately prior to the Investigations.

(e) Utilities. The City, at its cost, shall (i) tap into the water main on Antioch Road, (ii) tap into the sanitary sewer main east of the Property, (iii) construct a storm water system and comply with all governmental requirements, and (iv) arrange for all other utilities for its use of the Property to be placed underground.

Section 10.03. Representations and Warranties of Developer. To induce the City to enter into the Agreement and to accept the Property, Developer represents and warrants to the City as follows:

(a) Developer has the unconditional right to obtain and will convey, transfer and assign to the City, good, indefeasible and insurable right and title to the Property free and clear of any deeds of trust, mortgages, liens, encumbrances, leases or tenancies, licenses, conditional sales agreements, security interests, judgments, rights-of-way, easements, encroachments, claims and any other matters affecting title or use of the Property, except the Permitted Exceptions. Developer understands and agrees that the City will not take the Public Safety Site subject to any covenants or restrictions of Developer or otherwise for the benefit of the Project, except as specifically set forth in Section 10.01(a) above.

(b) Developer has duly and validly authorized and executed this Agreement, and has full right, title, power and authority to consummate the transactions provided for herein, and the joinder of no person or entity will be necessary to convey the Property fully and completely to the City at the Closing. Developer is qualified to do business in the State of Kansas. The execution by Developer of this Agreement and the consummation by Developer of the transactions contemplated hereby do not, and at the Closing will not, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under, Developer's bylaws, trust agreement, operating agreement or certificate or articles of organization, any indenture, agreement, instrument or obligation to which Developer is a party or by which the Property or any portion thereof is bound; and does not constitute a violation of any laws, order, rule or regulation applicable to Developer or any portion of the Property of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Developer or any portion of the Property.

(c) There are no adverse parties in possession of the Property or of any part thereof and Developer has not granted to any party any license, lease or other right relating to the use or possession of the Property.

(d) To Developer's actual knowledge, no pending condemnation, eminent domain, assessment or similar proceeding or charge affecting the Property or any portion thereof exists. Developer has not heretofore received any written notice, and has no knowledge, that any such proceeding or charge is contemplated.

(e) No work has been performed or is in progress at the Property, and no materials will have been delivered to the Property that might provide the basis for a mechanic's, materialmen's or other lien against the Property or any portion thereof, and all amounts due for such work and material (other than by or for the City) shall have been paid and all discharged to the City's satisfaction as of the Closing.

(f) There are no actions, suits or proceedings pending or, to Developer's actual knowledge, threatened against or affecting the Property or any portion thereof, or relating to or arising out of the ownership or operation of the Property, or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality.

(g) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or, to Developer's knowledge, pending or threatened against Developer or the Property.

(h) No Hazardous Materials have been installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Property by Developer or, to Developer's actual knowledge, by any third party, except agricultural chemicals in normal quantities. No activity has been undertaken on the Property by Developer or, to Developer's actual knowledge, by any third party which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of RCRA, or any Hazardous Materials Law, (ii) a release or threatened release of Hazardous Materials from the Property within the meaning of, or otherwise bring the Property within the ambit of, CERCLA or SARA or any Hazardous Materials Law or (iii) the discharge of Hazardous Materials into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Materials which would require a permit under any Hazardous Materials Law. No activity has been undertaken with respect to the Property by Developer or, to Developer's knowledge, any third party which would cause a violation or support a claim under RCRA, CERCLA, SARA or any other Hazardous Materials Law. To Developer's actual knowledge, no investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is in existence with respect to the Property, nor, to Developer's actual knowledge, is any of the foregoing threatened. No written notice has been received by Developer from any entity, governmental body or individual claiming any violation of any Hazardous Materials Law, or requiring compliance with any Hazardous Materials Law, or demanding payment or contribution for environmental damage or injury to natural resources.

Section 10.04. Covenants and Agreements of Developer. Developer covenants and agrees with the City, from the Effective Date until the Closing with respect to the Property or the earlier termination:

(a) Developer shall not enter into any new leases or extend any current leases with respect to the Property without the written consent of the City.

(b) Developer shall pay, or shall cause to be paid, when due all bills and expenses of the Property incurred by or for Developer. Developer shall not enter into, subject the Property to, or assume any new agreements with regard to the Property, without the prior written consent of the City.

(c) Developer shall not create any liens, declarations, restrictions, easements or other similar conditions affecting any portion of the Property or the uses thereof, without the prior written consent of the City.

Section 10.05. Conditions to the City's Obligations. The obligations of the City to accept the Property from Developer and to consummate the transactions contemplated by this Agreement are subject to the satisfaction, at all times prior to and as of the Title Company's delivery of the Conveyance Documents to the City with respect to the Property (or such other time period specified below), of each of the following conditions:

(a) All of the representations and warranties of Developer set forth in this Agreement shall be true at all times prior to, at and as of, the Closing in all material respects.

(b) Developer shall have delivered, performed, observed and complied with, all of the items, instruments, documents, covenants, agreements and conditions required by this Article X to be delivered, performed, observed and complied with by it prior to, or as of, the Closing.

(c) Developer shall not be in receivership or dissolution or have made any assignment for the benefit of creditors, or admitted in writing its inability to pay its debts as they mature, or have been adjudicated a bankrupt, or have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state and no such petition shall have been filed against it.

(d) No material or substantial adverse change shall have occurred with respect to the condition of the Property.

(e) Neither the Property nor any part thereof or interest therein shall have been taken by execution or other process of law in any action prior to the Closing, nor shall any action or proceeding seeking any such taking be pending.

Section 10.06. Developer's Closing Obligations. At the Closing with respect to the Property, Developer shall furnish and deliver to the City, at Developer's sole cost and expense, the following:

(a) a special warranty deed, executed by Developer, as grantor, in favor of the City, as grantee, conveying the Property to the City, subject only to the Permitted Exceptions (the "Deed"). The parties hereby agree that the Deed shall contain a restriction specifying that the Public Safety Site shall only be used for municipal safety operations during the ten (10) year period following the date the Deed is recorded with

the Johnson County Recorder's Office, after which time, the Public Safety Site shall be used for any lawful, public purpose.

(b) an ALTA Extended Coverage Owner's Policy (or policies) of Title Insurance (2006 form) with liability in an amount as stated by the City \$1,200,000, dated as of the Closing Date (the "Policy"), issued by the Title Company, insuring title to the fee interest in the Property in the City, subject only to the Permitted Exceptions and otherwise in a form satisfactory to the City. The Policy shall include such endorsements as the City shall reasonably require, including without limitation endorsements (if applicable) for Zoning, Access, Subdivision, Comprehensive, Tax Parcel, Deletion of Arbitration, and Same as Survey.

(c) Such affidavits or letters of indemnity from Developer as the Title Company shall reasonably require in order to omit from the Title Policy all exceptions for unfilled mechanic's, materialman's or similar liens (other than due to the activities of the City) and rights of parties in possession.

(d) Such instruments or documents as are necessary, or reasonably required by the City or the Title Company, to evidence the status and capacity of Developer and the authority of the person or persons who are executing the various documents on behalf of Developer in connection with the conveyance of the Property contemplated hereby.

(e) Such other documents as are reasonably required by the City to carry out the terms and provisions of this Agreement.

Section 10.07. Adjustments.

(a) Except as otherwise specifically provided in Article X hereof, all taxes, assessments, water or sewer charges, gas, electric, telephone or other utilities, operating expenses, employment charges, premiums on insurance policies, rents or other normally proratable items, shall be prorated between Developer and the City as of the Closing Date.

(b) Developer shall pay all real estate taxes and current installments of assessments, of whatever kind, accruing against the Property prior to the year in which the Closing occurs. All real estate taxes, sewer rents and taxes, current installments of assessments and charges, or any other governmental tax or charge, levied or assessed against the Property for the year in which the Closing occurs (irrespective of when such taxes, assessments and charges are due and payable), including, without limitation, that year's installment (both principal and interest) of any special assessments which are encumbrances permitted hereunder and which are due and payable in the year in which the Closing occurs, shall be prorated between the City and Developer as of the Closing Date. If the precise amount of taxes and assessments for the year in which the Closing occurs cannot be ascertained on the Closing Date, proration shall be computed on the basis of the taxes and assessments payable for the year preceding the year in which the Closing occurs, with readjustment to be made as soon as reasonably practicable after the actual assessed valuation and the actual rate are determined.

(c) Closing Costs. Developer shall pay:

(i) all survey, title examination fees and premiums for the Title Policy charges, including any charges for endorsements requested by the City;

(ii) Developer's legal, accounting and other professional fees and expenses and the cost of all opinions, certificates, instruments, documents and papers required to be delivered by Developer hereunder, including without limitation, the cost of performance by Developer of its obligations hereunder;

(iii) all other costs and expenses which are required to be paid by Developer pursuant to other provisions of this Article X; and

(iv) the charges for or in connection with the recording and/or filing of any instrument or document provided herein or contemplated by this Article X or any agreement or document described or referred to herein.

(v) All escrow and closing costs of the Title Company.

The City shall pay the City's legal, accounting and other professional fees and expenses and the cost of all opinions, certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by the City hereunder, including, without limitation, the cost of performance by the City of its obligations hereunder.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01. Expenses and TDD Administrative Fee. The Developer shall be responsible for and pay, within thirty (30) days of the invoice, the reasonable third party legal fees of the City incurred in connection with the creation and implementation of the TDD and this Agreement (including the negotiation of this Agreement), any related agreements and any amendments thereto, and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses, pursuant to the terms of Section 5.02. Additionally, the TDD Sales Tax shall be used to pay the TDD Administrative Fee. The TDD Administrative Fee shall be due on the date the TDD Sales Tax is received from the DOR and shall be disbursed from the TDD Sales Tax Fund (provided that the Act permits payment directly from the TDD Sales Tax Fund, and if not, within thirty (30) days of demand therefor by the City).

Section 11.02. 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.

Section 11.03. 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.

Section 11.04. Immunity of Officers, Employees and Members of the City. No personal recourse shall be had for the payment of the Pay-As-You-Go TDD Financing 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.

Section 11.05. 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 Eligible Expenses submitted for certification by the City.

Section 11.06. 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.

Section 11.07. 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.

Section 11.08. Kansas Law. This Agreement shall be construed in accordance with the laws of the State of Kansas. To the extent there is a conflict between this Agreement and the TDD Ordinance, the TDD Ordinance is controlling.

Section 11.09. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To the Developer:

DMP 159/69 LLC, KAP 159/69 LLC, LBK 159/69 LLC, and JEP 159/69
LLC
c/o Price Brothers Management
12712 Metcalf Avenue, Suite 200
Overland Park, KS 66213
Attn: Douglas M. Price

With copies to:

John Petersen
Curtis Petersen
Polsinelli Shughart, PC
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211

(b) To the City:

William Ebel, Jr., 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

Tammy M. Owens, Deputy City Attorney
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

(c) To the Secretary and KDOT:

Jerry Younger, Deputy Secretary and State Transportation Engineer
Kansas Department of Transportation
700 Harrison Street
Topeka, Kansas 66603

With copies to:

Kansas Department of Transportation, Chief Counsel
Office of Chief Counsel
700 Harrison Street
Topeka, Kansas 66603

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.

Section 11.10. Covenants of Parties.

(a) Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(i) Organization. Developer is a Kansas limited liability company duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(ii) Authority. The execution, delivery and performance by Developer of this Agreement are within such party's powers and have been duly authorized by all necessary action of such party.

(iii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(v) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

(b) Representations and Warranties of the City.

(i) Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

(ii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof,

will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

(iii) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(iv) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

Section 11.11. 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.

Section 11.12. Agreement Runs With the Land; Recording. The parties understand and agree that this Agreement runs with the land. Additionally, the Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Johnson County, Kansas. This Agreement, or a memorandum of this Agreement, shall be promptly recorded by the Developer at Developer's cost after execution, and proof of recording shall be provided to the City.

Section 11.13. 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.

Section 11.14. 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.

Section 11.15. Tax Implications. The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

Section 11.16. Required Disclosures. The City and Developer shall immediately notify the other party of the occurrence of any material event which would cause any of the information furnished to the other party in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be

stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 11.17. 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; provided, however, nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State of Kansas.

Section 11.18. Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1100 *et seq.*), the Budget Law (K.S.A. § 79-2935 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

[Remainder of page intentionally left blank. Signature pages immediately follow.]

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

ATTEST:

Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
City Attorney

APPROVED AS TO FORM:

Todd A. LaSala, Esq.
Stinson Morrison Hecker LLP

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this ____ day of April, 2013, before me, personally appeared Carl Gerlach, personally known, who being by me duly sworn did say that he is the Mayor of the City of Overland Park, Kansas, a Kansas corporation, that said corporation has no corporate seal, that said instrument was signed on behalf of said corporation by authority of its Council, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, Kansas the day and year last above written.

Notary Public
Printed Name: _____

My commission expires:

DMP 159/69, LLC, a Kansas limited liability company

By: _____
Printed Name: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of April, 2013, before me personally appeared _____, to me personally known, who being by me duly sworn did say that she is the _____ of DMP 159/69, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he/she 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.

Notary Public
Printed Name: _____

My Commission Expires:

ANNEX OF DEFINITIONS

The following terms have the following meanings:

"Act" means K.S.A. 12-17,140 *et seq.* and all additions and amendments thereto.

"Action" means any suit, action, investigation, claim or proceeding in which the Developer may become obligated to one or more of the City Indemnified Parties as set forth in Section 2.07(c) hereof.

"Affiliate" means a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer as set forth in Section 6.03 hereof.

"Agreement" means this BluHawk Development Agreement, as the same may be amended from time to time in accordance with the terms and conditions hereof.

"Applicable Laws and Requirements" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by government authorities, and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the Development Plan, the Act, the Kansas Cash Basis Law (K.S.A. § 10-1100, *et. seq.*) and Budget Law (K.S.A. § 75-2935 *et. seq.*).

"Casualty Escrow" means that certain escrow agreement for the net proceeds of any insurance relating to damage or destruction of the TDD Project or the net proceeds of any realization on title insurance for the TDD Project as set forth in Section 8.07(a) hereof.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* as referred to in Section 2.07(b) hereof.

"City" means the City of Overland Park, Kansas.

"City Indemnified Parties" means the City, its employees, agents, independent contractors and consultants, and the Secretary, KDOT and its employees, agents, independent contractors and consultants, all collectively for purposes of the indemnification provisions set forth in Section 2.07 hereof.

"Closing" shall mean the consummation of the sale and purchase of the Property provided for herein, to be held at the offices of the Title Company, or such other place as the City and Developer may mutually agree.

"Closing Date" shall mean the date that is forty five (45) days after the Effective Date.

"Commission" means the Kansas Human Rights Commission as referred to in Section 2.09(b) hereof.

"Deed" shall mean a special warranty deed, executed by Developer, as grantor, in favor of the City, as grantee, conveying the Property to the City, subject only to the Permitted Exceptions.

"Developer" means DMP 159/69, LLC, a Kansas limited liability company, KAP 159/69, LLC, a Kansas limited liability company, LBK 159/69, LLC, a Kansas limited liability company, and JEP 159/69, LLC, a Kansas limited liability company.

"Development Plan" means the preliminary development plan and the final development plan for the TDD Project approved by the City, as such plans may be modified or revised in accordance with the Unified Development Ordinance of the City of Overland Park and approved by the City from time to time.

"District" means the transportation development district generally described in Recital D and the legal description of which is more particularly set out in **Exhibit D-1** and the boundary map of which is set forth on **Exhibit D-2** attached hereto.

"DOR" means the Kansas Department of Revenue as set forth in Section 4.02.

"Due Diligence Materials" means any and all existing surveys, and any environmental studies or impact reports relating to the Property.

"Effective Date" means April ____, 2013.

"Eligible Expenses" means TDD Improvement Costs that are "costs" or a "project" (as defined by the Act) and therefore eligible for reimbursement under the Act and certified by the City hereunder as reimbursable with TDD Sales Tax proceeds, as well as the TDD Administrative Fee, costs incurred by Developer under Section 2.03(c)(i) hereof [164th Street], and up to Eleven Million Dollars (\$11,000,000) in costs to be incurred by the City to construct the Interchange, the costs of which KDOT will pay under the KDOT Agreement.

"Excusable Delays" means the delays for performance set forth in Section 9.07 hereof.

"Governmental Authorities" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

"Hazardous Materials" means (a) "hazardous substances" or "toxic substances" as those terms are defined by CERCLA, or by the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq., all as now and hereafter amended; (b) "hazardous wastes", as that term is defined by RCRA, as now and hereafter amended; (c) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances with the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste substances or materials, all as now and hereafter amended; (d) petroleum including crude oil or any fraction thereof; (e) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2011 et seq., as now

and hereafter amended; (f) asbestos in any form or condition; and (g) polychlorinated biphenyl or substances or compounds containing same.

"Hazardous Materials Law" shall mean any local, state or federal law relating to environmental conditions or industrial hygiene, including, without limitation, RCRA, CERCLA, the Hazardous Materials Transportation Act, the Federal Waste Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder.

"Infrastructure Improvements" means, without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, drives and other pedestrian and vehicular thoroughfares.

"Interchange" means a new interchange for 159th Street and U.S. Highway 69 as more particularly defined in Article I, Section 22 of the KDOT Agreement, with the parties specifically agreeing that the term "Interchange" shall not include the "Auxillary Lanes" (as defined in Article I, Section 4 of the KDOT Agreement).

"Interchange Right-of-Way" means that certain land or access rights necessary for the construction of the Interchange as described in Section 2.03(b)(ii).

"Investigations" means the right of the City and its agents and designees to examine the Property for the purpose of inspecting the same and making tests, inquiries and examinations, making soil analyses, conducting engineering studies, core borings, drillings, surveys, environmental assessments and such other physical due diligence investigations and analyses in, on and to the Property as the City deems necessary to ascertain the suitability of the Property for the intended development.

"KDOT" means the Kansas Department of Transportation.

"KDOT Agreement" means that certain agreement between the City and the Secretary which will, among other things, provide for (i) the reimbursement by KDOT of the City's costs and expenses arising out of the design, construction and completion of the Interchange, and certain auxiliary lanes, and (ii) the reimbursement of KDOT for such costs and expenses from the first \$11,000,000 of Pay-As-You-Go TDD Financing.

"KDOT Payment" means the first Eleven Million and 00/100 Dollars (\$11,000,000.00) of the TDD Sales Tax proceeds to KDOT until such time as KDOT has been fully reimbursed for KDOT's payments for Interchange construction costs pursuant to the terms of the KDOT Agreement.

"Overall Project Site" means that certain real property which is located in the City and is generally bounded on the North by 159th Street, on the East by U.S. Highway 69, on the South by 167th Street and on the West by Antioch Road, a general boundary map of which is set forth on Exhibit A attached hereto.

"Parking Improvements" means structured and surface parking improvements containing the number of spaces required by the Applicable Laws and Requirements for the floor space of any portion of the TDD Project.

"Parties" means the City and Developer.

"Pay-As-You-Go TDD Financing" means a method of financing pursuant to K.S.A. 17,147a, in which the costs of the TDD Improvements are financed without notes or bonds, and the costs are reimbursed as TDD Sales Tax is deposited in the TDD Sales Tax Fund as set forth in Section 4.04 hereof.

"Performance Milestones" means Developer's anticipated development milestones for the TDD Project which are set forth on **Exhibit H** attached hereto.

"Permitted Exceptions" shall mean those title exceptions to the Public Safety Site which have been approved in writing by the City, or are deemed to have been approved by the City upon the expiration of the Review Period.

"Permitted Modification" means the Developer's right to modify the scope and physical parameters of the TDD Project to the extent Developer satisfies the items set forth in Section 7.04 hereof.

"Phase" means a single phase (collectively, "Phases") of construction of the TDD Project as set forth in connection with the Performance Milestones described in Section 2.06 hereof and as more fully described in **Exhibit H** attached hereto

"Private Funds" means Developer's by private equity and debt to be used to pay TDD Project Costs as set forth in Section 4.01 hereof.

"Property" means the Public Safety Site together with all of Developer's rights, titles, appurtenant interests, covenants, licenses, mineral rights, privileges and benefits thereunto belonging, and Developer's right, title and interest in and to any easements, right-of-way, rights of ingress or egress or other interests in, on or under any land, highway, street, road or avenue, open or proposed, in, on, across, in front of, abutting or adjoining such real property including, without limitation, any strips and gores adjacent to or lying between such real property and any adjacent real property.

"Public Improvements" means those improvements set forth in Section 2.03 hereof.

"Public Safety Site" means that certain 5.3 acre tract of land as referred to in Section 2.03(a) and as legally described in **Exhibit B-1** and as depicted on **Exhibit B-2**.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.07(b) hereof.

"Review Period" means that period of time commencing on the Effective Date and ending on that date that is thirty (30) days after the Effective date.

“Secretary” means Michael S. King, the Secretary of the Department of Transportation of the State of Kansas, and his official successors and assigns.

"State" means the State of Kansas.

"Substantially Completed" means the stage in the progress of the construction of improvements, or as to any particular portion thereof, when said construction is sufficiently complete so that the improvements or such particular portion can be occupied or utilized for its intended use provided however that finished shell space which is suitable for future tenant improvements shall be considered substantial completion.

"Survey" means an ALTA/ACSM survey of the Property by a registered land surveyor in a form and content that is satisfactory to the City and sufficient to allow the Title Company to issue the Title Policy.

"TDD" means a transportation development district pursuant to the Act.

"TDD Administrative Fee" means an amount equal to the greater of Five Thousand and 00/100 Dollars (\$5,000.00) or one percent (1%) of the TDD Sales Tax proceeds deposited into the TDD Sales Tax Fund hereunder from time to time during the Term.

"TDD Cap" means the limitation on the amount of TDD Sales Tax available to Developer for reimbursement of Eligible Expenses as set forth in Section 4.04(c) hereof. The TDD Cap is Twenty-One Million Dollars (\$21,000,000).

"TDD Collection Period" means the period that commences on the date that the TDD Sales Tax is first imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TDD Financing or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the TDD Sales Tax is first imposed, as set forth in Section 4.04(d) hereof.

"TDD Improvements" means that portion of the TDD Project, the costs of which are reimbursable under the Act and may be Eligible Expenses and reimbursable with Pay-As-You-Go TDD Financing hereunder, subject to the TDD Cap. The TDD Improvements, and the estimated costs therefor, are set forth on **Exhibit G** hereto.

"TDD Improvement Costs" means the costs for construction and completion of the TDD Improvements, as estimated on **Exhibit G** hereto.

"TDD Ordinance" means Ordinance No. TDD-3000, adopted by the City on April 15, 2013 as referenced in Recital F hereof and attached hereto as **Exhibit E**.

"TDD Petition" means that certain petition submitted by the Developer on or about March 15, 2013, a copy of which is attached hereto as **Exhibit C**.

"TDD Project" means the improvements to the District, including the TDD Improvements, to be designed, developed, constructed and completed by Developer as described

in Section 2.01 hereof and on **Exhibit F**. The term "TDD Project" does not include the Interchange.

"**TDD Project Budget**" means the estimated budget for the TDD Project, which includes the TDD Improvements and estimated costs thereof, as set forth on **Exhibit G** attached hereto.

"**TDD Project Costs**" means the costs of designing, developing, constructing and completing the TDD Project, including both those Eligible Expenses to be paid with Pay-As-You-Go TDD Financing, and those costs to be funded solely by Developer's private equity and debt and funds.

"**TDD Sales Tax**" means the tax authorized by K.S.A. 12-17,140 and amendments thereto, and as more particularly described in Section 4.02 hereof.

"**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 District, and that is used to finance the TDD Improvements pursuant to the Act, as set forth in Section 4.03 hereof.

"**Term**" means that certain period from the Effective Date through that date on which this Agreement expires as set forth in Section 8.01 hereof.

"**Title Commitment**" shall mean a current commitment or current commitments issued by the Title Company to the City pursuant to the terms of which the Title Company shall commit to issue the Title Policy to the City in accordance with the provisions of this Agreement, and reflecting all matters which would be listed as exceptions to coverage on the Title Policy.

"**Title Company**" shall mean First American Title Insurance Company, with an address of 911 Main Street, Suite 2500, Kansas City, Missouri 64105.

"**Title Policy**" shall mean an ALTA Extended Coverage Owner's Policy (or policies) of Title Insurance (2006 form) with liability in an amount as stated by the City, dated as of the Closing Date, issued by the Title Company, insuring title to the fee interest in the Property in the City, subject only to those exceptions not objected to by the City and in otherwise form satisfactory to the City. The Title Policy shall include such endorsements as the City shall reasonably require, including without limitation endorsements (if applicable) for Zoning, Access, Subdivision, Comprehensive, Tax Parcel, Deletion of Arbitration, and Same as Survey.

EXHIBITS

- Exhibit A: Overall Project Site – Boundary Map
- Exhibit B-1: Public Safety Site – Legal Description
- Exhibit B-2: Public Safety Site – Boundary Map
- Exhibit C: TDD Petition
- Exhibit D-1: District Legal Description
- Exhibit D-2: District Boundary Map
- Exhibit E: TDD Ordinance
- Exhibit F: TDD Project Description/Development Plan
- Exhibit G: Budget – TDD Improvement Costs
- Exhibit H: Performance Milestones
- Exhibit I: Form of Certificate of Expenditure
- Exhibit J: Covenant to Maintain Private Parking Facilities
- Exhibit K: Insurance Specifications

EXHIBIT A

OVERALL PROJECT SITE – BOUNDARY MAP

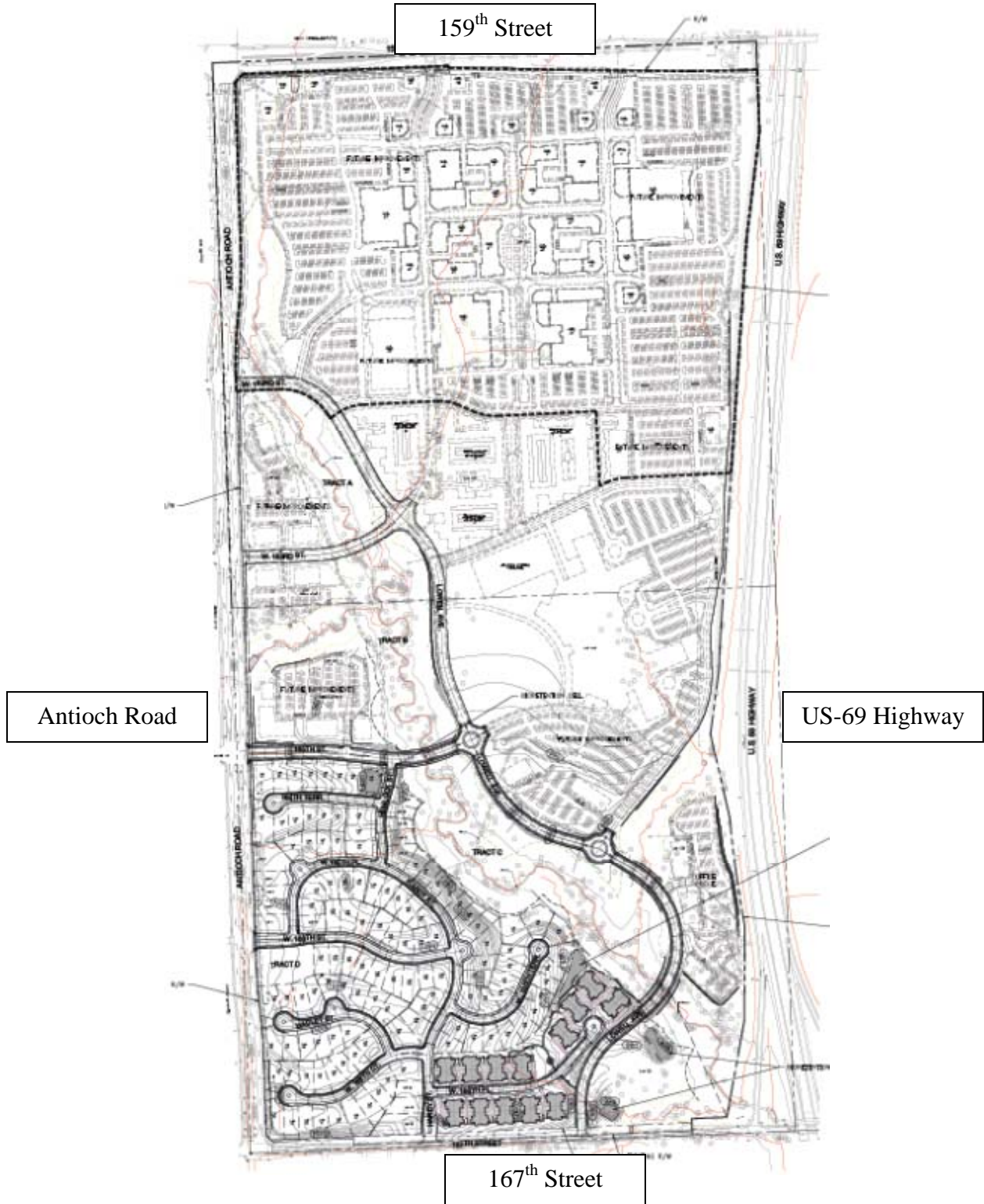


EXHIBIT B-1

PUBLIC SAFETY SITE – LEGAL DESCRIPTION

All that part of the Northwest Quarter of Section 18, Township 14 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, describes as follows:

COMMENCING at the Southwest corner of the Northwest Quarter of Section 18, Township 14 South, Range 25 East; thence North 2 degrees 01 minutes 22 seconds West along the West line of the Northwest Quarter of said Section 18 a distance of 270.78 feet to a point; thence North 87 degrees 41 minutes 24 seconds East a distance of 60.00 feet to a point on the East right of way line of Antioch Road, the POINT OF BEGINNING; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 785.82 feet to a point; thence North 88 degrees 08 minutes 36 seconds East a distance of 119.38 feet to a point; thence South 27 degrees 23 minutes 37 seconds East a distance of 551.46 feet to a point; thence South 20 degrees 11 minutes 23 seconds East a distance of 293.97 feet to a point; thence in a Southwesterly direction along a curve to the right whose initial tangent bears South 78 degrees 01 minutes 46 seconds West, having a radius of 570.01 feet, through a central angle of 10 degrees 03 minutes 38 seconds, an arc distance of 100.09 feet to a point; thence South 88 degrees 05 minutes 25 seconds West a distance of 347.74 feet to the POINT OF BEGINNING and containing 233,954 Square Feet or 5.371 Acres, more or less.

EXHIBIT B-2

PUBLIC SAFETY SITE – BOUNDARY MAP

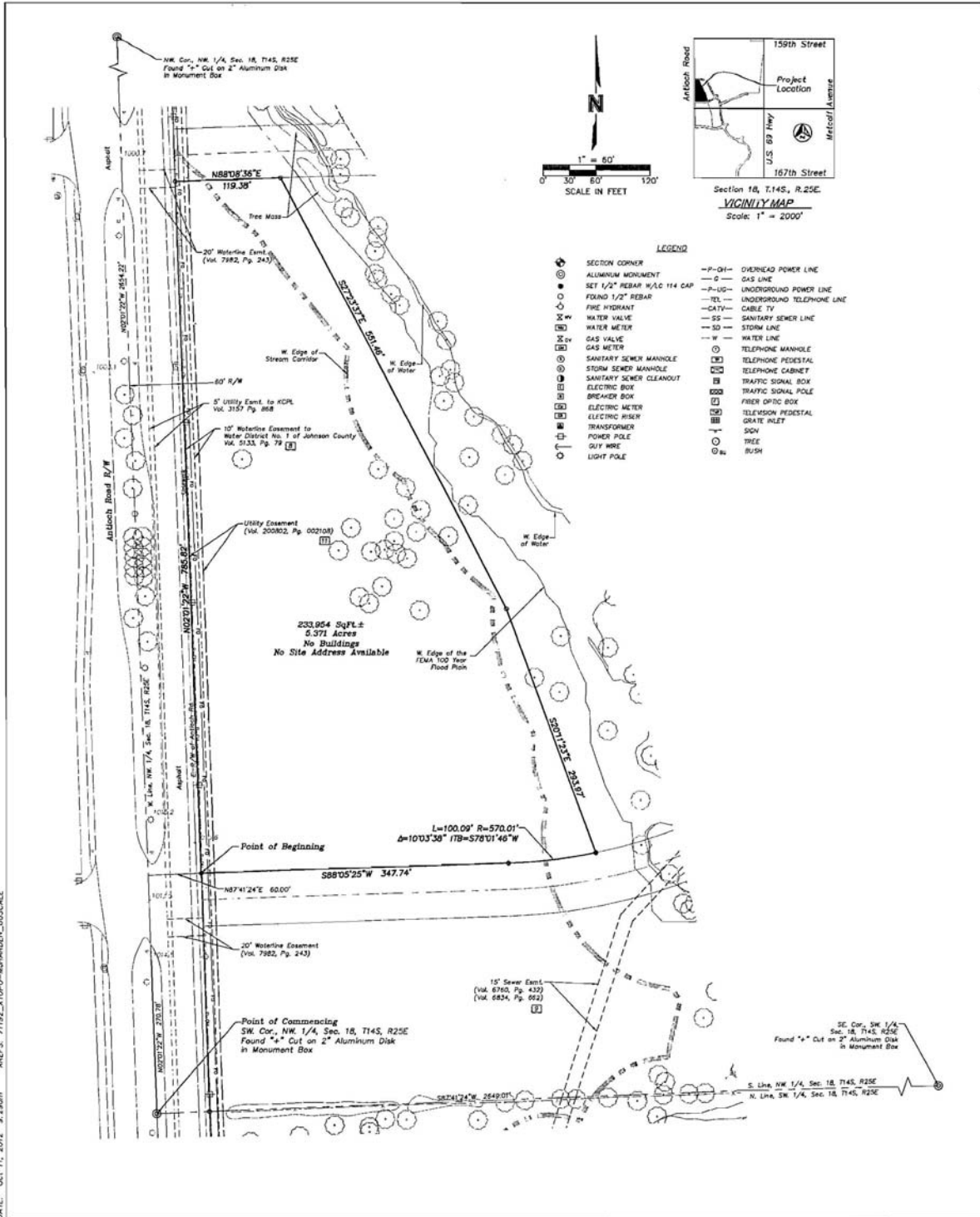


EXHIBIT C
TDD PETITION

**PETITION FOR THE CREATION OF A
TRANSPORTATION DEVELOPMENT DISTRICT
(159TH STREET & US 69 INTERCHANGE PROJECT)**



TO: City Council,
City of Overland Park, Kansas

The undersigned, being the owner of record, whether resident or not, of one hundred percent (100%) of the land area contained within the hereinafter described Transportation Development District, hereby petitions the City of Overland Park, Kansas (the "City") to create a Transportation Development District ("TDD") and authorize the proposed TDD project (the "TDD Project") 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 Petitioner states as follows:

1. GENERAL NATURE

The general nature of the proposed TDD Project is set forth on **EXHIBIT "A"** attached hereto and incorporated herein by reference.

Through TDD financing in accordance with this Petition and with the Act, the Developer seeks public assistance to finance the development, construction, maintenance, and/or operations of the TDD Project.

2. ESTIMATED COST

The estimated maximum cost of the TDD Project is \$ 32,000,000.

3. PROPOSED METHOD OF FINANCING

The proposed method of financing the TDD Project is TDD Pay-as-you-go financing, as defined in the Act.

4. PROPOSED METHOD AND AMOUNT OF ASSESSMENT

Petitioner does not propose that the TDD Project be financed through the levying of assessments.

5. PROPOSED AMOUNT OF SALES TAX

Petitioner proposes that the TDD Project be financed through the levying of a TDD sales tax in the amount of 1.0% as authorized by the Act.

374881.2

EXHIBIT C-1

6. MAP AND LEGAL DESCRIPTION OF THE PROPOSED TDD

A map of the TDD is attached hereto at EXHIBIT "B".

The legal description of the TDD is attached hereto at EXHIBIT "C".

7. NOTICE TO PETITION SIGNER

Petitioner hereby acknowledges that signatures may not be withdrawn from this Petition by the signer hereof after the City commences consideration of this Petition, or later than seven (7) days after the filing hereof with the City Clerk, whichever occurs first.

8. PETITION BINDING ON FUTURE OWNERS

Petitioner hereby acknowledges that if this Petition is not properly withdrawn as permitted by the Act, any future owners of the property within the TDD shall be bound by this Petition.

9. COUNTERPARTS

For purposes of executing this Petition, this document signed and transmitted by facsimile machine or telecopier is to be treated as an original document. This Petition may be executed in one or more counterparts and by each signer hereof on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which shall constitute one instrument.

10. ACKNOWLEDGMENTS

Petitioner acknowledges that:

(A) the City's approval of this Petition or of the TDD Project set forth in this Petition and creation of a TDD by the City as proposed in this Petition does not eliminate independent requirements by the Petitioner to comply with all applicable zoning, planning, permit and other laws relating to the development of property;

(B) the City is relying on the estimated costs of the TDD Project set forth in this Petition without independent investigation as to the accuracy of such estimates;

(C) the implementation of the TDD proposed by the Petition is subject to the terms of a reimbursement or development agreement to be entered into between the City and the Petitioner, its successor, or its assignee, as such assignee may be reasonably approved by the City; and

(D) the Petitioner will enter into a mutually acceptable funding agreement with the City under which the Petitioner will pay for the reasonable costs incurred by the City related to the City's review of this Petition.

No further text on this page

374881.2

EXHIBIT C-3

IN WITNESS WHEREOF, the undersigned Petitioner has executed the above foregoing
Petition to create the TDD on the date set forth below:

LBK 159/69 LLC, a Kansas limited liability
company

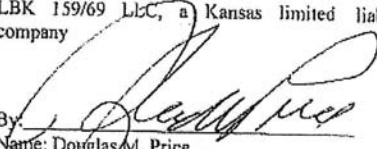
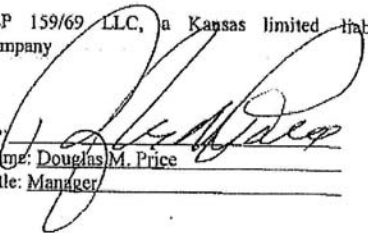
By: 
Name: Douglas M. Price
Title: Manager

EXHIBIT C-4

IN WITNESS WHEREOF, the undersigned Petitioner has executed the above foregoing
Petition to create the TDD on the date set forth below:

JEP 159/69 LLC, a Kansas limited liability
company

By: 
Name: Douglas M. Price
Title: Manager

374881.1

EXHIBIT C-5

IN WITNESS WHEREOF, the undersigned Petitioner has executed the above foregoing
Petition to create the TDD on the date set forth below:

KAP 159/69 LLC, a Kansas limited liability
company

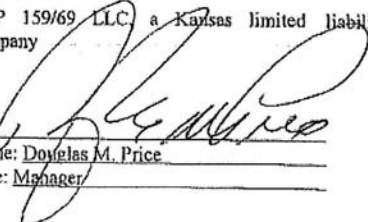
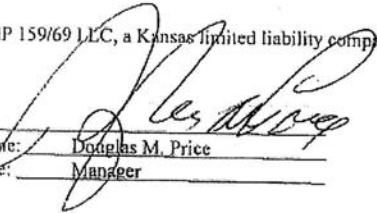
By: 
Name: Douglas M. Price
Title: Manager

EXHIBIT C-6

IN WITNESS WHEREOF, the undersigned Petitioner has executed the above foregoing Petition to create the TDD on the date set forth below:

DMP 159/69 LLC, a Kansas limited liability company

By: 
Name: Douglas M. Price
Title: Manager

374881.1

EXHIBIT C-7

EXHIBIT "A"

GENERAL NATURE OF PROPOSED TDD PROJECT

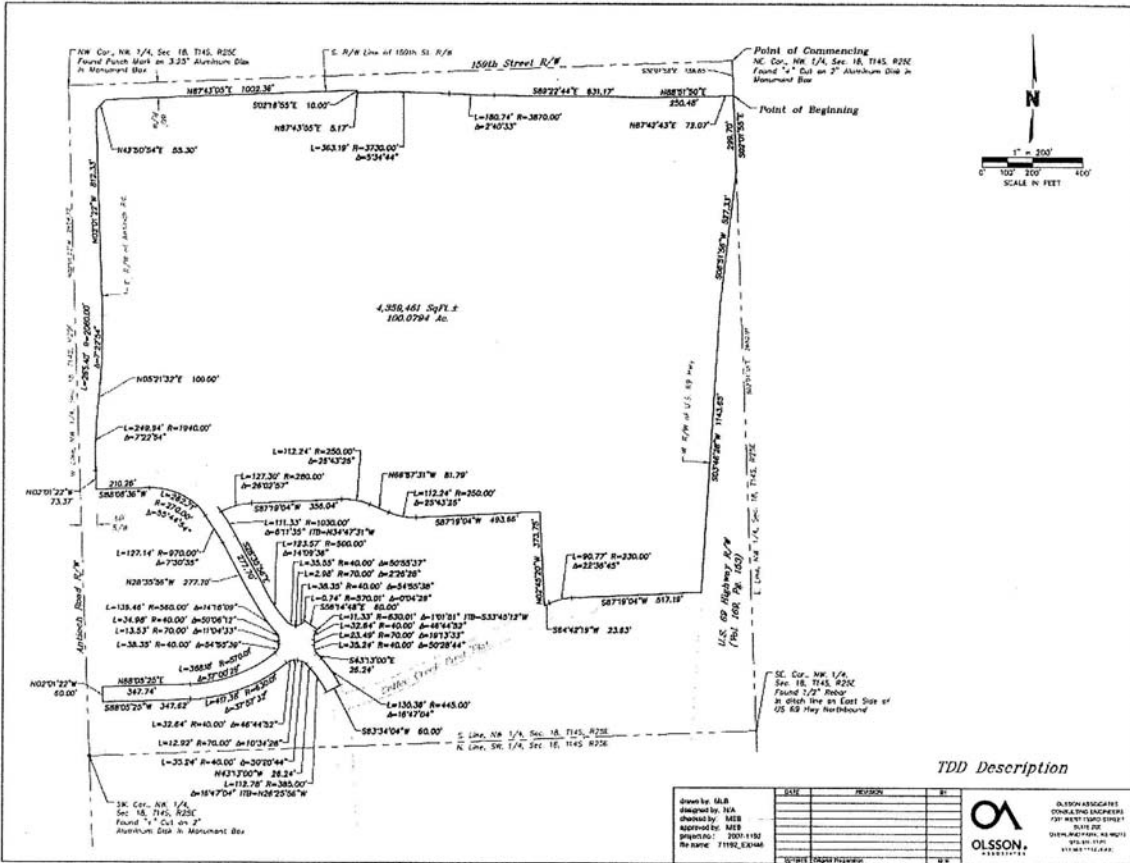
The design and construction of on-ramps and off-ramps at the intersection of US Highway 69 and 159th Street, widening existing bridges over US Highway 69 at 159th Street, widening 159th Street to include left and right turn lanes in the vicinity of the aforementioned on-ramps and off-ramps, widening southbound, and northbound US Highway 69 to include auxiliary lanes, traffic signals, sidewalks, bike/hike trail, storm drainage systems, street lights, retaining walls, landscaping and other incidental items as required to complete an interchange at US 69 Highway and 159th Street (the "Improvement").

AND

To provide for the design and construction of other transportation related and/or infrastructure improvements, as defined in K.S.A. 12-17,141(k), within or adjacent to the TDD, which are anticipated to include, but shall not be limited to: public and private streets; surface and structured parking facilities; signalization; sidewalks and associated pedestrian amenities; signage; bus stops and facilities; landscaping and irrigation; streetscape improvements; utility and other infrastructure, including, but not limited to water mains, gas mains, electrical service lines, and stormwater management facilities, such as storm sewers and detention facilities; fencing and walls; street lighting; and site work and land acquisition costs associated with any and all of the above.

EXHIBIT "B"

MAP OF TDD



374881.2

EXHIBIT C-9

EXHIBIT "C"

LEGAL DESCRIPTION OF TDD

File No. 2007-1192
Coffee Creek
February 18, 2013
Revised February 20, 2013

EXH46

TDD Description

All that part of the Northwest Quarter of Section 18, Township 14 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of Section 18, Township 14 South, Range 25 East; thence South 2 degrees 01 minutes 55 seconds East along the East line of the Northwest Quarter of said Section 18 a distance of 138.00 feet to the point of intersection of the West right of way line of U.S. Highway 69 and the South right of way line of 159th Street, the POINT OF BEGINNING; thence continuing South 2 degrees 01 minutes 55 seconds East along the West right of way line of U.S. Highway 69 a distance of 299.70 feet to a point; thence South 6 degrees 51 minutes 56 seconds West along the West right of way line of U.S. Highway 69 a distance of 527.33 feet to a point; thence South 3 degrees 46 minutes 28 seconds West along the West right of way line of U.S. Highway 69 a distance of 1143.65 feet to a point on the Easterly prolongation of the North line of Coffee Creek First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 19 minutes 04 seconds West along the North line of Coffee Creek First Plat and its prolongation a distance of 517.19 feet to a point; thence in a Southwesterly direction along the North line of said Coffee Creek First Plat and along a curve to the left, having a radius of 230.00 feet, through a central angle of 22 degrees 36 minutes 45 seconds, an arc distance of 90.77 feet to a point; thence South 64 degrees 42 minutes 19 seconds West along the Northerly line of said Coffee Creek First Plat a distance of 23.63 feet to a point; thence North 2 degrees 45 minutes 20 seconds West a distance of 373.75 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 493.66 feet to a point; thence in a Northwesterly direction along a curve to the right, having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence North 66 degrees 57 minutes 31 seconds West a distance of 81.79 feet to a point; thence in a Northwesterly direction along a curve to the left; having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 356.04 feet to a point; thence in a Southwesterly direction along a curve to the left, having a radius of 280.00 feet, through a central angle of 26 degrees 02 minutes 57 seconds, an arc distance of 127.30 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 34 degrees 47 minutes 31 seconds East, having a radius of 1030.00 feet, through a central angle of 6 degrees 11 minutes 35 seconds, an arc distance of 111.33 feet to a point; thence South 28 degrees 35 minutes 56 seconds East a distance of 277.70 feet to a point; thence in a Southeasterly direction along a curve to the left, having a radius of 500.00 feet, through a central angle of 14 degrees 09 minutes 36 seconds, an arc distance of 123.57 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 55 minutes 37 seconds, an arc distance of 35.55 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 2 degrees 26 minutes 28 seconds, an arc distance of 2.98 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 38 seconds, an arc distance of 38.35 feet to a point of compound curvature; thence along a curve to the left, having a radius of 570.01 feet, through a central angle of 0 degrees 04 minutes 29 seconds, an arc distance of 0.74 feet to a point; thence South 56 degrees 14 minutes 48 seconds East a distance of 60.00 feet to a point; thence in a Southwesterly direction along a curve to the right whose initial tangent bears South 33 degrees 45 minutes 12 seconds West, having a radius of 630.01 feet, through a central angle of 1 degree 01 minutes 51 seconds, an arc distance of 11.33 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 19 degrees 13 minutes 33 seconds, an arc distance of 23.49

feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point; thence South 43 degrees 13 minutes 00 seconds East a distance of 26.24 feet to a point; thence in a Southeasterly direction along a curve to the right, having a radius of 445.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 130.36 feet to a point; thence South 63 degrees 34 minutes 04 seconds West a distance of 60.00 feet to a point; thence in a Northwesterly direction along a curve to the left whose initial tangent bears North 26 degrees 25 minutes 56 seconds West, having a radius of 385.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 112.78 feet to a point; thence North 43 degrees 13 minutes 00 seconds West a distance of 26.24 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 10 degrees 34 minutes 28 seconds, an arc distance of 12.92 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 630.01 feet, through a central angle of 37 degrees 57 minutes 32 seconds, an arc distance of 417.38 feet to a point; thence South 88 degrees 05 minutes 25 seconds West a distance of 347.62 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 60.00 feet to a point; thence North 88 degrees 05 minutes 25 seconds East a distance of 347.74 feet to a point; thence in a Northeasterly direction along a curve to the left, having a radius of 570.01 feet, through a central angle of 37 degrees 00 minutes 29 seconds, an arc distance of 368.18 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 39 seconds, an arc distance of 38.35 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 11 degrees 04 minutes 33 seconds, an arc distance of 13.53 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 06 minutes 12 seconds, an arc distance of 34.98 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 560.00 feet, through a central angle of 14 degrees 16 minutes 09 seconds, an arc distance of 139.46 feet to a point; thence North 28 degrees 35 minutes 56 seconds West a distance of 277.70 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 970.00 feet, through a central angle of 7 degrees 30 minutes 35 seconds, an arc distance of 127.14 feet to a point of compound curvature; thence along a curve to the left, having a radius of 270.00 feet, through a central angle of 55 degrees 44 minutes 54 seconds, an arc distance of 262.71 feet to a point; thence South 88 degrees 08 minutes 36 seconds West a distance of 210.26 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 73.37 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the right, having a radius of 1940.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 249.94 feet to a point; thence North 5 degrees 21 minutes 32 seconds East along the East right of way line of Antioch Road a distance of 100.00 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the left, having a radius of 2060.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 265.40 feet to a point; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 812.33 feet to a point on the South right of way line of 159th Street; thence North 42 degrees 50 minutes 54 seconds East along the South right of way line of 159th Street a distance of 55.30 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 1002.36 feet to a point; thence South 2 degrees 16 minutes 55 seconds East along the South right of way line of 159th Street a distance of 10.00 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 5.17 feet to a point; thence in an Easterly direction along the South right of way line of 159th Street and along a curve to the right, having a radius of 3730.00 feet, through a central angle of 5 degrees 34 minutes 44 seconds, an arc distance of 363.19 feet to a point of reverse curvature; thence continuing along the South right of way line of 159th Street and along a curve to the left, having a radius of 3870.00 feet, through a central angle of 2 degrees 40 minutes 33 seconds, an arc distance of 180.74 feet to a point; thence South 89 degrees 22 minutes 44 seconds East along the South right of way line of 159th Street a distance of 631.17 feet to a point; thence North 88 degrees 51 minutes 50 seconds East along the South right of way line of 159th Street a distance of 250.48 feet to a point; thence North 87 degrees 42 minutes 43 seconds East along the South right of way line of 159th Street a distance of 72.07 feet to the POINT OF BEGINNING and containing 4,359,461 Square Feet or 100.0794 Acres, more or less.

374881.2

EXHIBIT C-11

EXHIBIT D-1

DISTRICT – LEGAL DESCRIPTION

All that part of the Northwest Quarter of Section 18, Township 14 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of Section 18, Township 14 South, Range 25 East; thence South 2 degrees 01 minutes 55 seconds East along the East line of the Northwest Quarter of said Section 18 a distance of 138.00 feet to the point of intersection of the West right of way line of U.S. Highway 69 and the South right of way line of 159th Street, the POINT OF BEGINNING; thence continuing South 2 degrees 01 minutes 55 seconds East along the West right of way line of U.S. Highway 69 a distance of 299.70 feet to a point; thence South 6 degrees 51 minutes 56 seconds West along the West right of way line of U.S. Highway 69 a distance of 527.33 feet to a point; thence South 3 degrees 46 minutes 28 seconds West along the West right of way line of U.S. Highway 69 a distance of 1143.65 feet to a point on the Easterly prolongation of the North line of Coffee Creek First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 19 minutes 04 seconds West along the North line of Coffee Creek First Plat and its prolongation a distance of 517.19 feet to a point; thence in a Southwesterly direction along the North line of said Coffee Creek First Plat and along a curve to the left, having a radius of 230.00 feet, through a central angle of 22 degrees 36 minutes 45 seconds, an arc distance of 90.77 feet to a point; thence South 64 degrees 42 minutes 19 seconds West along the Northerly line of said Coffee Creek First Plat a distance of 23.63 feet to a point; thence North 2 degrees 45 minutes 20 seconds West a distance of 373.75 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 493.66 feet to a point; thence in a Northwesterly direction along a curve to the right, having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence North 66 degrees 57 minutes 31 seconds West a distance of 81.79 feet to a point; thence in a Northwesterly direction along a curve to the left; having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 356.04 feet to a point; thence in a Southwesterly direction along a curve to the left, having a radius of 280.00 feet, through a central angle of 26 degrees 02 minutes 57 seconds, an arc distance of 127.30 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 34 degrees 47 minutes 31 seconds East, having a radius of 1030.00 feet, through a central angle of 6 degrees 11 minutes 35 seconds, an arc distance of 111.33 feet to a point; thence South 28 degrees 35 minutes 56 seconds East a distance of 277.70 feet to a point; thence in a Southeasterly direction along a curve to the left, having a radius of 500.00 feet, through a central angle of 14 degrees 09 minutes 36 seconds, an arc distance of 123.57 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 55 minutes 37 seconds, an arc distance of 35.55 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 2 degrees 26 minutes 28 seconds, an arc distance of 2.98 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 38 seconds, an arc distance of 38.35 feet to a point of compound curvature; thence along a curve to the left, having a radius of 570.01 feet, through a central angle of 0 degrees 04 minutes 29 seconds, an arc distance of 0.74 feet to a point; thence South 56 degrees

14 minutes 48 seconds East a distance of 60.00 feet to a point; thence in a Southwesterly direction along a curve to the right whose initial tangent bears South 33 degrees 45 minutes 12 seconds West, having a radius of 630.01 feet, through a central angle of 1 degree 01 minutes 51 seconds, an arc distance of 11.33 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 19 degrees 13 minutes 33 seconds, an arc distance of 23.49 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point; thence South 43 degrees 13 minutes 00 seconds East a distance of 26.24 feet to a point; thence in a Southeasterly direction along a curve to the right, having a radius of 445.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 130.36 feet to a point; thence South 63 degrees 34 minutes 04 seconds West a distance of 60.00 feet to a point; thence in a Northwesterly direction along a curve to the left whose initial tangent bears North 26 degrees 25 minutes 56 seconds West, having a radius of 385.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 112.78 feet to a point; thence North 43 degrees 13 minutes 00 seconds West a distance of 26.24 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 10 degrees 34 minutes 28 seconds, an arc distance of 12.92 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 630.01 feet, through a central angle of 37 degrees 57 minutes 32 seconds, an arc distance of 417.38 feet to a point; thence South 88 degrees 05 minutes 25 seconds West a distance of 347.62 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 60.00 feet to a point; thence North 88 degrees 05 minutes 25 seconds East a distance of 347.74 feet to a point; thence in a Northeasterly direction along a curve to the left, having a radius of 570.01 feet, through a central angle of 37 degrees 00 minutes 29 seconds, an arc distance of 368.18 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 39 seconds, an arc distance of 38.35 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 11 degrees 04 minutes 33 seconds, an arc distance of 13.53 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 06 minutes 12 seconds, an arc distance of 34.98 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 560.00 feet, through a central angle of 14 degrees 16 minutes 09 seconds, an arc distance of 139.46 feet to a point; thence North 28 degrees 35 minutes 56 seconds West a distance of 277.70 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 970.00 feet, through a central angle of 7 degrees 30 minutes 35 seconds, an arc distance of 127.14 feet to a point of compound curvature; thence along a curve to the left, having a radius of 270.00 feet, through a central angle of 55 degrees 44 minutes 54 seconds, an arc distance of 262.71 feet to a point; thence South 88 degrees 08 minutes 36 seconds West a distance of 210.26 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 73.37 feet to a point; thence in a Northeasterly

EXHIBIT D-1 2

direction along the East right of way line of Antioch Road and along a curve to the right, having a radius of 1940.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 249.94 feet to a point; thence North 5 degrees 21 minutes 32 seconds East along the East right of way line of Antioch Road a distance of 100.00 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the left, having a radius of 2060.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 265.40 feet to a point; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 812.33 feet to a point on the South right of way line of 159th Street; thence North 42 degrees 50 minutes 54 seconds East along the South right of way line of 159th Street a distance of 55.30 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 1002.36 feet to a point; thence South 2 degrees 16 minutes 55 seconds East along the South right of way line of 159th Street a distance of 10.00 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 5.17 feet to a point; thence in an Easterly direction along the South right of way line of 159th Street and along a curve to the right, having a radius of 3730.00 feet, through a central angle of 5 degrees 34 minutes 44 seconds, an arc distance of 363.19 feet to a point of reverse curvature; thence continuing along the South right of way line of 159th Street and along a curve to the left, having a radius of 3870.00 feet, through a central angle of 2 degrees 40 minutes 33 seconds, an arc distance of 180.74 feet to a point; thence South 89 degrees 22 minutes 44 seconds East along the South right of way line of 159th Street a distance of 631.17 feet to a point; thence North 88 degrees 51 minutes 50 seconds East along the South right of way line of 159th Street a distance of 250.48 feet to a point; thence North 87 degrees 42 minutes 43 seconds East along the South right of way line of 159th Street a distance of 72.07 feet to the POINT OF BEGINNING and containing 4,359,461 Square Feet or 100.0794 Acres, more or less.

EXHIBIT D-1 3

EXHIBIT D-2

DISTRICT – BOUNDARY MAP

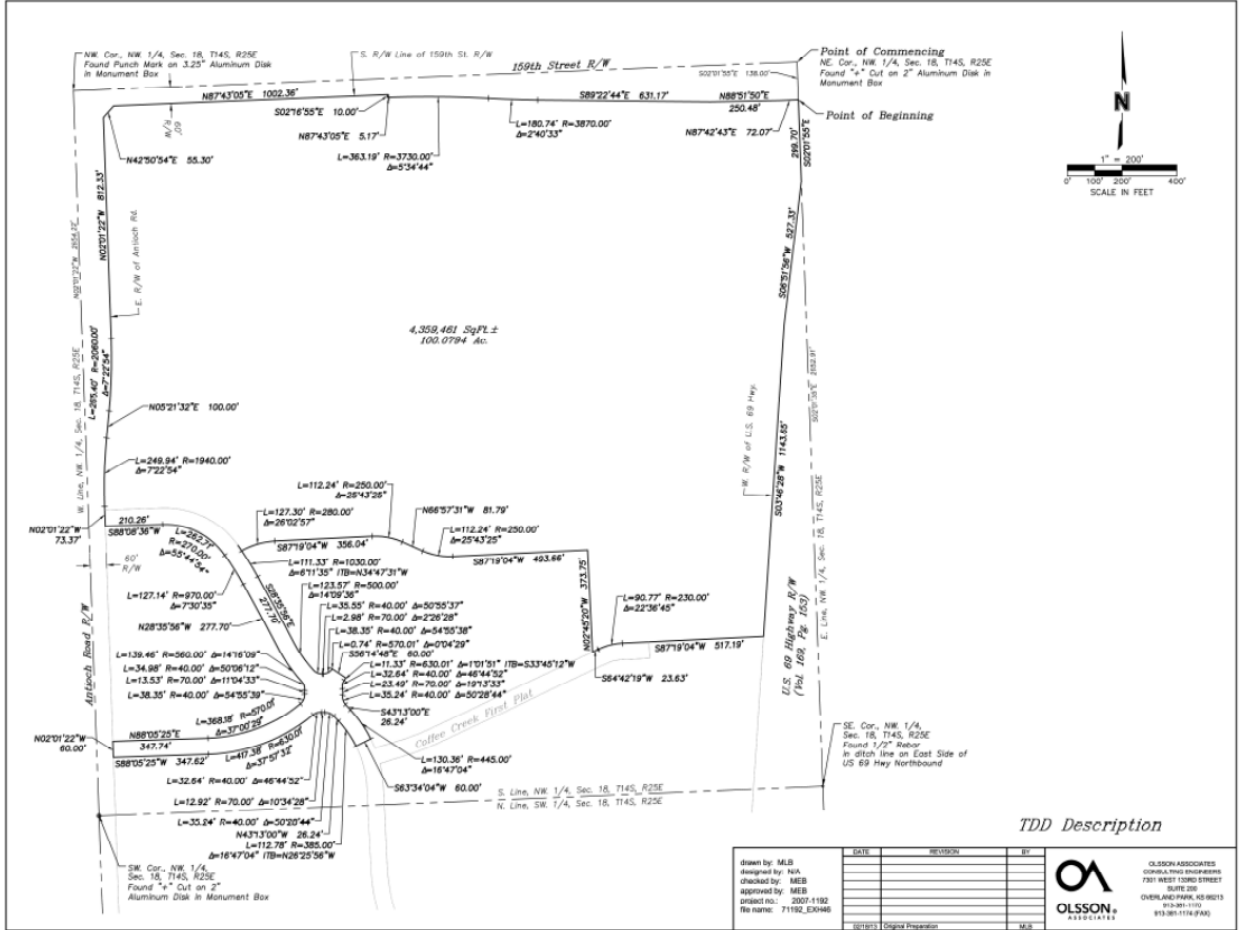


EXHIBIT E

TDD ORDINANCE

ORDINANCE NO. TDD-3000

AN ORDINANCE MAKING FINDINGS AS TO THE NATURE AND ADVISABILITY OF CREATING A TRANSPORTATION DEVELOPMENT DISTRICT IN THE SOUTHWEST CORNER OF 159TH STREET & US 69 HIGHWAY; CREATING SAID TRANSPORTATION DEVELOPMENT DISTRICT; AUTHORIZING CERTAIN TRANSPORTATION PROJECTS RELATING THERETO; APPROVING THE MAXIMUM COST OF SUCH TRANSPORTATION PROJECTS; ESTABLISHING THE BOUNDARIES OF THE TRANSPORTATION DEVELOPMENT DISTRICT; PROVIDING FOR THE METHOD OF FINANCING OF THE TRANSPORTATION DEVELOPMENT DISTRICT; AND AUTHORIZING THE IMPOSITION OF A TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX WITHIN THE TRANSPORTATION DEVELOPMENT DISTRICT.

WHEREAS, pursuant to the Transportation Development District Act, K.S.A. 12-17,140 *et seq.*, as amended (the “Act”), the City of Overland Park, Kansas (the “City”), is authorized to acquire interests in property and to construct any project or undertaking relating thereto, including improving, constructing, reconstructing, maintaining, restoring, replacing, renewing, repairing, installing, furnishing, equipping or extending any bridge, street, road, highway access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hanger, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure, including, but not limited to, utility relocation, sanitary and storm sewers and lift stations, drainage conduits, channels and levees, streetlight, fixtures, connection and facilities, underground gas, water, heating and electrical services and connections located within or without the public right-of-way, sidewalks and pedestrian underpasses or overpasses, and water main and extensions (collectively, the “transportation projects”); and

WHEREAS, the Act further authorizes the City, in order to pay the costs of such transportation projects, to levy special assessments in the transportation development district to be paid in installments, to impose a transportation development district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within a transportation development district in any increment of .10% or .25% not to exceed 1.0% and to issue special obligation bonds payable from such transportation development district sales tax; and

WHEREAS, a petition (the “Petition”) was filed by DMP 159/69 LLC, a Kansas limited liability company, KAP 159/69 LLC, a Kansas limited liability company, LBK 159/69 LLC, a Kansas limited liability company, and JEP 159/69 LLC, a Kansas limited liability company (collectively, the "Developer") with the City Clerk of the City on March 15, 2013, requesting the creation of a transportation development district located generally in the Southwest corner of 159th Street & US 69 Highway within the City (the “SWC 159th Street & US 69 TDD”), the

making of transportation project improvements relating thereto and the imposition of a transportation development district sales tax in order to pay the costs of such transportation projects; and

WHEREAS, the Act provides that prior to creating any transportation development district, the City shall, by resolution, direct and order a public hearing on the advisability of creating such transportation development district, construction of such transportation projects therein and the intent of the City to levy a transportation development district sales tax within such district and shall give notice of said public hearing in accordance with the Act; and

WHEREAS, the Governing Body of the City adopted Resolution No. 3991 (the “Resolution”) on March 18, 2013, directing that a public hearing on the proposed SWC 159th Street & US 69 TDD be held on April 15, 2013, and requiring that the City Clerk provide for notice of such public hearing as set forth in the Act; and

WHEREAS, the Resolution was published once each week for two consecutive weeks in an official City newspaper and notice of the public hearing was mailed by certified mail to all owners within the proposed SWC 159th Street & US 69 TDD; and

WHEREAS, on April 15, 2013, the Governing Body of the City conducted a public hearing on the proposed SWC 159th Street & US 69 TDD, the proposed transportation projects relating thereto, the method of financing the same and the imposition of a transportation development district sales tax; and

WHEREAS, the Governing Body of the City hereby finds and determines it to be advisable to create the SWC 159th Street & US 69 TDD and set forth the boundaries thereof, authorize transportation projects relating thereto, approve the maximum costs of such transportation projects, approve the method of financing the same and impose the transportation development district sales tax, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

Section 1. Creation of SWC 159th Street & US 69 Transportation Development District; Approval of Boundaries. The Governing Body of the City hereby finds and determines that it is advisable to create the SWC 159th Street & US 69 TDD within the City and approve the boundaries thereof, and, as such, hereby creates the SWC 159th Street & US 69 TDD and approves the boundaries thereof. A legal description of the property within the SWC 159th Street & US 69 TDD is set forth on **Exhibit A** attached hereto and incorporated by reference. A map generally outlining the boundaries of the SWC 159th Street & US 69 TDD is attached hereto as **Exhibit B** and incorporated herein by reference.

Section 2. Authorization of Transportation Development District Projects; Maximum Costs. The Governing Body of the City hereby authorizes the project within the SWC 159th Street & US 69 TDD described on **Exhibit C** attached hereto (the “Project”) and determines the maximum cost of the Project to be financed with TDD Sales Tax (as defined below) is Thirty Two Million and Zero One Hundredths Dollars (\$32,000,000.00), plus the TDD Administrative Fee as defined by, and imposed pursuant to, that certain Bluhawk Development Agreement between the City and the Developer. Notwithstanding the approval of the Project by

this Ordinance, the Project and owner or owners of all property comprising the Project must comply with all applicable zoning, planning, permit and other laws and regulations applicable to the Project.

Section 3. Method of Financing. The Project will be financed on a pay-as-you-go basis from revenues received from the imposition of a transportation development district sales tax in the amount of one percent (1%) imposed on sales within the boundaries of the SWC 159th Street & US 69 TDD (the “TDD Sales Tax”). No special assessments shall be implemented under the Act to pay for the proposed Project and no special obligation notes or bonds will be issued for the Project.

Section 4. Imposition of Transportation District Sales Tax. The Governing Body of the City hereby imposes the TDD Sales Tax within the SWC 159th Street & US 69 TDD in an amount of one percent (1.0%) on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers’ sales tax act within the SWC 159th Street & US 69 TDD, with such TDD Sales Tax to commence on July 1, 2015, or any other effective date the City may approve by ordinance if a change in the effective date outlined herein is timely requested in writing by all owners of record in the SWC 159th Street & US 69 TDD.

Section 5. Effective Date. This Ordinance shall be in full force and take effect from and after its passage, approval and publication once in the official City newspaper. When this Ordinance becomes effective in accordance with this Section, the City Clerk shall provide a certified copy of the same to the State director of Taxation pursuant to K.S.A. 12-189. The City Clerk is hereby further authorized to submit this Ordinance to the Registers of Deeds, referenced to in Johnson County as the Office of Records and Tax Administration for recording.

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PASSED by the City Council this ____ day of _____, 2013.
APPROVED by the Mayor this ____ day of _____, 2013.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

(SEAL)

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM

By: _____
Tammy M. Owens
Deputy City Attorney

EXHIBIT A

Legal Description of SWC 159th Street & US 69 Transportation Development District

File No. 2007-1192
Coffee Creek
February 18, 2013
Revised February 20, 2013

EXH46

TDD Description

All that part of the Northwest Quarter of Section 18, Township 14 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of Section 18, Township 14 South, Range 25 East; thence South 2 degrees 01 minutes 55 seconds East along the East line of the Northwest Quarter of said Section 18 a distance of 138.00 feet to the point of intersection of the West right of way line of U.S. Highway 69 and the South right of way line of 159th Street, the POINT OF BEGINNING; thence continuing South 2 degrees 01 minutes 55 seconds East along the West right of way line of U.S. Highway 69 a distance of 299.70 feet to a point; thence South 6 degrees 51 minutes 56 seconds West along the West right of way line of U.S. Highway 69 a distance of 527.33 feet to a point; thence South 3 degrees 46 minutes 28 seconds West along the West right of way line of U.S. Highway 69 a distance of 1143.65 feet to a point on the Easterly prolongation of the North line of Coffee Creek First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 19 minutes 04 seconds West along the North line of Coffee Creek First Plat and its prolongation a distance of 517.19 feet to a point; thence in a Southwesterly direction along the North line of said Coffee Creek First Plat and along a curve to the left, having a radius of 230.00 feet, through a central angle of 22 degrees 36 minutes 45 seconds, an arc distance of 90.77 feet to a point; thence South 64 degrees 42 minutes 19 seconds West along the Northerly line of said Coffee Creek First Plat a distance of 23.63 feet to a point; thence North 2 degrees 45 minutes 20 seconds West a distance of 373.75 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 493.66 feet to a point; thence in a Northwesterly direction along a curve to the right, having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence North 66 degrees 57 minutes 31 seconds West a distance of 81.79 feet to a point; thence in a Northwesterly direction along a curve to the left; having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 356.04 feet to a point; thence in a Southwesterly direction along a curve to the left, having a radius of 280.00 feet, through a central angle of 26 degrees 02 minutes 57 seconds, an arc distance of 127.30 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 34 degrees 47 minutes 31 seconds East, having a radius of 1030.00 feet, through a central angle of 6 degrees 11 minutes 35 seconds, an arc distance of 111.33 feet to a point; thence South 28 degrees 35 minutes 56 seconds East a distance of 277.70 feet to a point; thence in a Southeasterly direction along a curve to the left, having a radius of 500.00 feet, through a central angle of 14 degrees 09 minutes 36 seconds, an arc distance of 123.57 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 55 minutes 37 seconds, an arc

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thence North 43 degrees 13 minutes 00 seconds West a distance of 26.24 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 10 degrees 34 minutes 28 seconds, an arc distance of 12.92 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 630.01 feet, through a central angle of 37 degrees 57 minutes 32 seconds, an arc distance of 417.38 feet to a point; thence South 88 degrees 05 minutes 25 seconds West a distance of 347.62 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 60.00 feet to a point; thence North 88 degrees 05 minutes 25 seconds East a distance of 347.74 feet to a point; thence in a Northeasterly direction along a curve to the left, having a radius of 570.01 feet, through a central angle of 37 degrees 00 minutes 29 seconds, an arc distance of 368.18 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 39 seconds, an arc distance of 38.35 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 11 degrees 04 minutes 33 seconds, an arc distance of 13.53 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 06 minutes 12 seconds, an arc distance of 34.98 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 560.00 feet, through a central angle of 14 degrees 16 minutes 09 seconds, an arc distance of 139.46 feet to a point; thence North 28 degrees 35 minutes 56 seconds West a distance of 277.70 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 970.00 feet, through a central angle of 7 degrees 30 minutes 35 seconds, an arc distance of 127.14 feet to a point of compound curvature; thence along a curve to the left, having a radius of 270.00 feet, through a central angle of 55 degrees 44 minutes 54 seconds, an arc distance of 262.71 feet to a point; thence South 88 degrees 08 minutes 36 seconds West a distance of 210.26 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line

of Antioch Road a distance of 73.37 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the right, having a radius of 1940.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 249.94 feet to a point; thence North 5 degrees 21 minutes 32 seconds East along the East right of way line of Antioch Road a distance of 100.00 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the left, having a radius of 2060.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 265.40 feet to a point; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 812.33 feet to a point on the South right of way line of 159th Street; thence North 42 degrees 50 minutes 54 seconds East along the South right of way line of 159th Street a distance of 55.30 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 1002.36 feet to a point; thence South 2 degrees 16 minutes 55 seconds East along the South right of way line of 159th Street a distance of 10.00 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 5.17 feet to a point; thence in an Easterly direction along the South right of way line of 159th Street and along a curve to the right, having a radius of 3730.00 feet, through a central angle of 5 degrees 34 minutes 44 seconds, an arc distance of 363.19 feet to a point of reverse curvature; thence continuing along the South right of way line of 159th Street and along a curve to the left, having a radius of 3870.00 feet, through a central angle of 2 degrees 40 minutes 33 seconds, an arc distance of 180.74 feet to a point; thence South 89 degrees 22 minutes 44 seconds East along the South right of way line of 159th Street a distance of 631.17 feet to a point; thence North 88 degrees 51 minutes 50 seconds East along the South right of way line of 159th Street a distance of 250.48 feet to a point; thence North 87 degrees 42 minutes 43 seconds East along the South right of way line of 159th Street a distance of 72.07 feet to the POINT OF BEGINNING and containing 4,359,461 Square Feet or 100.0794 Acres, more or less.

EXHIBIT B

MAP

SWC 159th Street & US 69 Transportation Development District

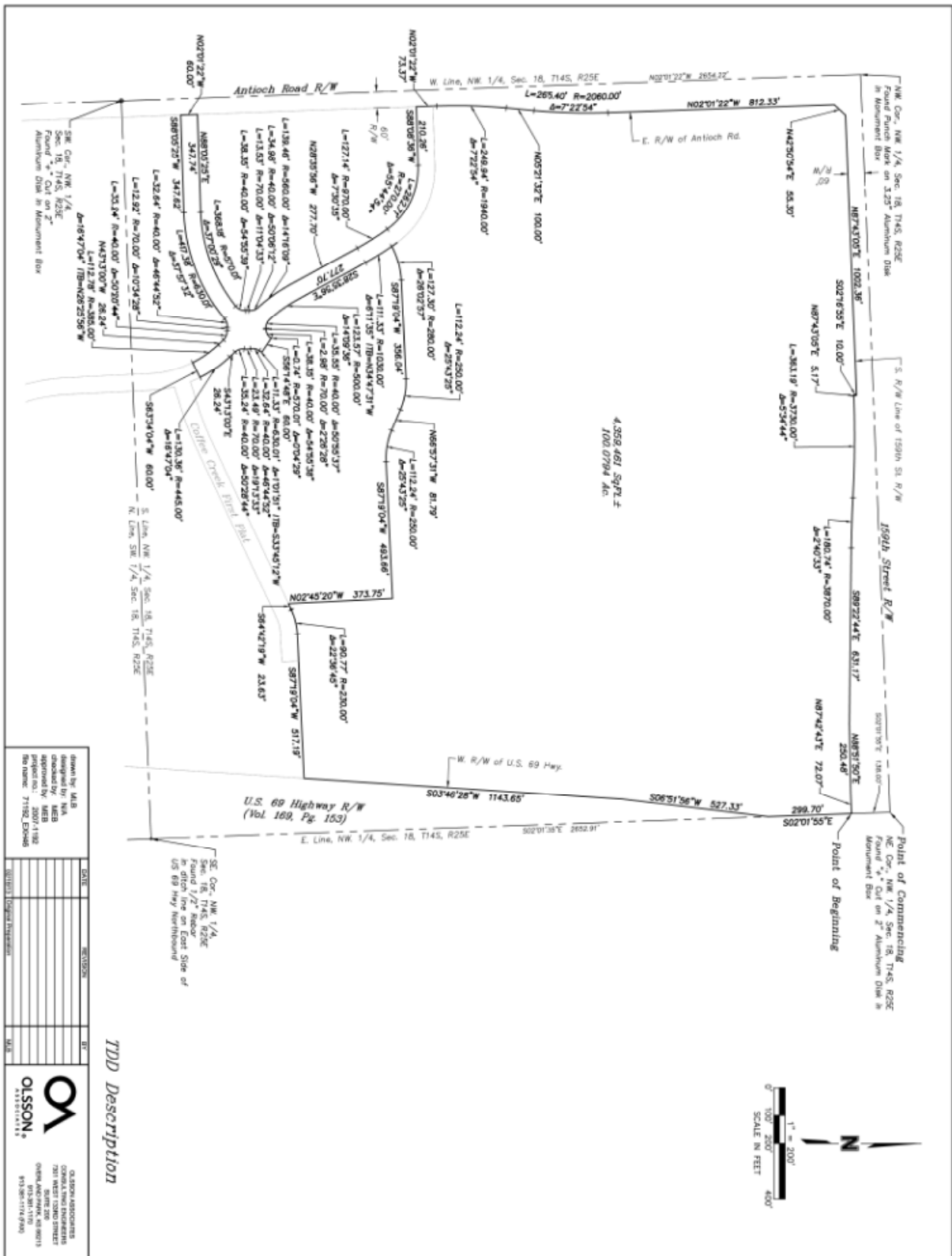


EXHIBIT E-9

EXHIBIT C

SWC 159th Street & US 69 Transportation Development District Project

The design and construction of on-ramps and off-ramps at the intersection of US Highway 69 and 159th Street, widening existing bridges over US Highway 69 at 159th Street, widening 159th Street to include left and right turn lanes in the vicinity of the aforementioned on-ramps and off-ramps, widening southbound, and northbound US Highway 69 to include auxiliary lanes, traffic signals, sidewalks, bike/hike trail, storm drainage systems, street lights, retaining walls, landscaping and other incidental items as required to complete an interchange at US 69 Highway and 159th Street.

AND

To provide for the design and construction of other transportation related and/or infrastructure improvements, as defined in K.S.A. 12-17,141(k), within or adjacent to the TDD, which are anticipated to include, but shall not be limited to: public and private streets; surface and structured parking facilities; signalization; sidewalks and associated pedestrian amenities; signage; bus stops and facilities; landscaping and irrigation; streetscape improvements; utility and other infrastructure, including, but not limited to water mains, gas mains, electrical services lines, and stormwater management facilities, such as storm sewers and detention facilities; fencing and walls; street lighting; and site work and land acquisition costs associated with any and all of the above.

EXHIBIT F

TDD PROJECT DESCRIPTION / DEVELOPMENT PLAN

- Approximately 1,000,000 square feet of mixed use retail shopping, which may include, among other concepts, a grocery store, drug store, neighborhood services and offerings, specialty and boutique shops, restaurants, entertainment and other retail concepts.
- The Project shall include surface parking improvements (and may include structured parking improvements).
- Public street extensions and private drives throughout the District.
- Utilities and other infrastructure, including without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, and other pedestrian and vehicular thoroughfares within the District.

See District Site Plan on the following page

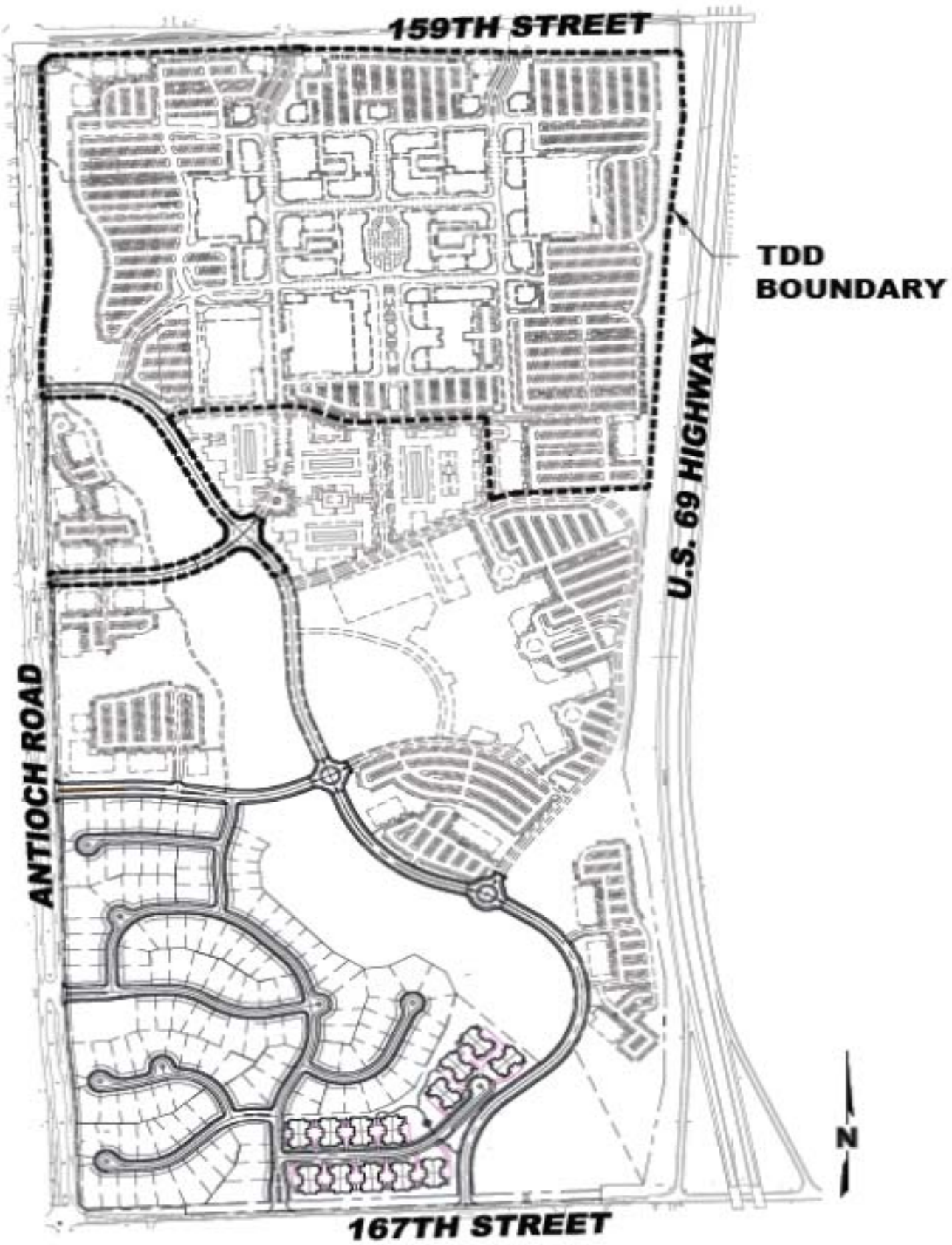


EXHIBIT F-2

EXHIBIT G

BUDGET – TDD IMPROVEMENT COSTS

IMPROVEMENT DESCRIPTION	TOTAL COST	TDD Reimbursement [1]	Private Investment
Land	\$6,069,000	\$4,248,300	\$1,820,700
Land Acquisition Costs	\$6,069,000	\$4,248,300 [2]	\$1,820,700
\$60,641.851/Acre @ 100.0794 Acres	\$6,069,000		
Soft Costs	\$33,125,569	\$1,551,000	\$31,574,569
Project Design	\$10,340,000	\$1,551,000 [3]	\$8,789,000
Arch, MEP, Structural, Civil, Other	\$10,340,000		
Construction Loan Interest	\$2,500,000	\$0	\$2,500,000
Loan Interest	\$2,500,000		
Real Estate Taxes	\$500,000	\$0	\$500,000
Taxes Payable During Construction	\$500,000		
Financing Exp & Legal	\$590,000	\$0	\$590,000
Financing & Legal Exp	\$350,000		
Title Insurance Premiums	\$192,000		
Lender Inspection Fees	\$48,000		
Leasing & Marketing	\$10,043,779	\$0	\$10,043,779
Leasing & Marketing	\$10,043,779		
Courier & Delivery	\$5,000	\$0	\$5,000
Courier Services	\$5,000		
Plans (Printing)	\$125,000	\$0	\$125,000
Construction Documents	\$125,000		
Aerial Photos	\$3,500	\$0	\$3,500
Aerial Photo Allowance	\$3,500		

EXHIBIT G-1

IMPROVEMENT DESCRIPTION	TOTAL COST	TDD Reimbursement	[1]	Private Investment
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Safety	\$76,800	\$0		\$76,800
Safety Consultant	\$76,800			
Security	\$50,000	\$0		\$50,000
Security Guards/Fencing	\$50,000			
Excise Tax	\$936,540	\$0		\$936,540
Excise Tax	\$936,540			
Permits & Special Inspections	\$3,813,700	\$0		\$3,813,700
Building Permits	\$568,700			
Future Traffic Signal Assessments Imposed at Zoning	\$410,000			
Unspecified Transportation Fee to OP	\$2,750,000			
Overland Park Inspection Fee	\$85,000			
Quality Control (Testing)	\$500,000	\$0		\$500,000
Soil Compaction, Sanitary Observation, Retaining Walls	\$500,000			
Temporary Utilities	\$450,000	\$0		\$450,000
Temporary Utilities	\$450,000			
Construction Facilities	\$300,000	\$0		\$300,000
Construction Facilities - On Site	\$300,000			
Temporary Roads & Access	\$75,000	\$0		\$75,000
Temporary Entrance Allowance	\$75,000			
Field Engineering	\$600,000	\$0		\$600,000
Survey, Staking, Field Observation	\$600,000			
Insurance Requirements	\$646,250	\$0		\$646,250
General Liability Insurance	\$323,125			
Bonding Costs - Allowance				
Builder's Risk Insurance	\$323,125			
Water Meter	\$1,120,000	\$0		\$1,120,000
	\$1,120,000			

EXHIBIT G-2

IMPROVEMENT DESCRIPTION	TOTAL COST	TDD Reimbursement	[1]	Private Investment
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Sewer Tap Fees	\$450,000	\$0		\$450,000
	\$450,000			

Site Work Costs	\$26,372,925	\$18,116,048		\$8,256,877
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Clearing & Grading	\$3,900,000	\$2,730,000		\$1,170,000
Grading, Rock Excavation	\$3,900,000			
Sediment Control	\$300,000	\$210,000		\$90,000
Erosion Control, Stream Corridor Fencing	\$300,000			
Sidewalks	\$725,000	\$507,500		\$217,500
Sidewalks	\$725,000			
Asphalt Paving	\$9,000,000	\$6,300,000		\$2,700,000
Asphalt & Flyash	\$9,000,000			
Concrete Paving	\$225,000	\$157,500		\$67,500
Concrete Paving	\$225,000			
Curb & Gutter	\$1,623,000	\$1,136,100		\$486,900
Curb & Gutter	\$1,623,000			
Pavement Markings & Signs	\$97,500	\$68,250		\$29,250
Pavement Striping & Signage	\$97,500			
Property Fencing	\$75,000	\$52,500		\$22,500
Fencing - Retailing Walls, Safety	\$75,000			
Engineered Walls (Stone Walls)	\$505,790	\$354,053		\$151,737
Retaining Walls -	\$505,790			
Irrigation and landscaping	\$1,153,620	\$807,534		\$346,086
Landscaping - Sod, Seed, Trees	\$1,153,620			
Irrigation				

EXHIBIT G-3

IMPROVEMENT DESCRIPTION	TOTAL COST	TDD Reimbursement [1]	Private Investment
Joint Trenching	\$505,000	\$353,500	\$151,500
KCPL Primary Install Charges	\$0		
Install/Relocate Phone, Fiber & Data Lines	\$80,000		
KCPL Joint Trench, Conduit & Transformer Bases	\$425,000		
Water Mains	\$1,300,000	\$910,000	\$390,000
Water Mains	\$1,300,000		
Sanitary Sewer	\$780,000	\$546,000	\$234,000
Sanitary Sewer	\$780,000		
Storm Sewer	\$4,163,765	\$2,914,636	\$1,249,129
Storm Sewer RCB, Mains, Inlets, Boxes, Rip Rap	\$3,063,765		
BMP Allowance	\$1,100,000		
Gas Mains	\$291,750	\$204,225	\$87,525
Natural Gas Mains - Sleeves, KGS Charges	\$291,750		
Traffic Signage & Signal	\$850,000	\$250,000 [4]	\$600,000
Signage, Striping, Traffic Control	\$250,000		
Monument Signage & Wayfayer Signage	\$200,000		
Traffic Signals on 159th Street	\$400,000		
Street Lights	\$877,500	\$614,250	\$263,250
Street Lights	\$877,500		
Building Costs	\$107,897,821	\$0	\$107,897,821
Building Improvements	\$107,897,821	\$0	\$107,897,821
Retail Buildings	\$107,897,821		
TOTAL DEVELOPMENT COSTS	\$173,465,315	\$23,915,348 [5]	\$149,549,967
159th & US 69 Interchange	\$11,000,000	\$11,000,000 [6]	

EXHIBIT G-4

IMPROVEMENT DESCRIPTION	TOTAL COST	TDD Reimbursement	[1]	Private Investment
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TOTAL COSTS INCLUDING INTERCHANGE	\$184,465,315	\$34,915,348		\$149,549,967
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19%

81%

- [1] Prior to reimbursement with TDD revenues, costs incurred with respect to line items above must be certified as Eligible Expenses pursuant to the terms of the Development Agreement.
- [2] Reimbursement for Land Costs shall not exceed this line item budget. If the cost of this item is less than this budget amount, these excess funds cannot be transferred to another line item as described in note [5].
- [3] Reimbursement for Project Design shall not exceed this line item budget. If the cost of this item is less than this budget amount, these excess funds cannot be transferred to another line item as described in note [5].
- [4] Reimbursement for Traffic expenses are limited to Traffic Signage, Striping, and Traffic Control and shall not exceed this line item budget. If the cost of this item is less than this budget amount, these excess funds cannot be transferred to another line item as described in note [5].
- [5] Subject to the TDD Cap of \$21,000,000 (which does not include the costs of the 159th and US 69 Interchange), Developer shall be reimbursed with available TDD revenues pursuant to the terms of the Development Agreement for any and all costs incurred with respect to the line items set forth above. Estimated TDD Improvement Costs set forth above are estimates only, and the amount set forth above for any given line item shall not act as a cap on the amount of reimbursable costs for such line item except for Land Costs, Project Design Costs, and Traffic Signage as indicated in footnotes 2, 3 and 4.
- [6] The reimbursement of KDOT for costs incurred to construct the Interchange shall not exceed \$11,000,000 pursuant to Section 4.04(a) of the Development Agreement.

EXHIBIT G-5

EXHIBIT H

PERFORMANCE MILESTONES*^

<u>Improvements</u>	<u>Commencement Date</u>	<u>Completion Date</u>
Retail Phase 1 - 125,000 s.f.	June, 2014	June, 2016
Retail Phase 2 -- 125,000 s.f	Jan, 2017	Dec, 2018
Retail Phase 3 -- 150,000 s.f.	Jan, 2018	Dec, 2019
Retail Phase 4 -- 150,000 s.f.	Jan, 2019	Dec, 2019
Retail Phase 5 --- 125,000 s.f.	Jan, 2020	Dec, 2020
Retial Phase 6 -- 125,000 s.f.	Jan, 2021	Dec, 2021
Retail Phase 7 --- 125,000 s.f.	Jan, 2022	Dec, 2022
Retail Phase 8 -- 109,000 s.f.	Jan, 2023	Dec, 2023

* The timing for commencement and completion of each Phase as set forth above is subject to the Developer's right to appear before the City's governing body to demonstrate and show cause to the City why Developer failed to comply with the Performance Milestones set forth herein, as more fully addressed in Section 2.06 hereof. Additionally, the Developer's phasing and timing obligations set forth in the Agreement are subject to and conditioned on the timely construction, completion and opening of the Interchange as set forth in Section 2.03(b)(v) hereof.

^ The TDD Project components set forth above, including the type, size, and scope, may be revised pursuant to Section 2.01 hereof.

EXHIBIT I
FORM OF CERTIFICATE OF EXPENDITURE
CERTIFICATION OF EXPENDITURES
BLUHAWK TDD IMPROVEMENTS

Date: _____

Certification # _____

Governing Body of the

City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 2012 (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and [_____] (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, successors, assigns, tenants, or transferees 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 Developer is responsible for under the Agreement (i.e., not insurance policies of assignees, tenants, or transferees) are in full force and effect and that the Developer is in compliance, in all material respects, with all other terms of the Agreement.

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

Approved:

By:

Its

City's Representative

EXHIBIT I-1

ATTACHMENT A
TO CERTIFICATION OF EXPENDITURES
TDD IMPROVEMENTS

PAGE _____ OF _____

Date: _____

Certification # _____

DESCRIPTION OF EXPENSE
(ATTACH ADDITIONAL SUPPORTING DOCUMENTATION)

Amount of Expense

1.		\$	
2.		\$	
3.		\$	
4.		\$	
	TOTAL EXPENSES	\$	

Signature of Developer

EXHIBIT J

COVENANT TO MAINTAIN PRIVATE PARKING FACILITIES

THIS COVENANT made and entered into this ____ day of _____, 20__, by and between the City of Overland Park, Kansas, (the "City"), and _____, its successors and assigns ("Owner").

WHEREAS, Owner has an interest in certain real property generally located at _____ in Overland Park, Johnson County, Kansas, and legally described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner intends to cause or has caused the Property to be developed as _____, in accordance with the Municipal Code of the City of Overland Park, Kansas; and

WHEREAS, Owner proposes the construction or replacement of private streets, drives, parking and driveway facilities located on the Property (the "Facilities"); and

WHEREAS, the City has deemed that it is in the public interest to properly maintain, repair and replace the Facilities for the benefit of the Property, the general public and surrounding areas; and

WHEREAS, this Covenant for the proper maintenance, repair and replacement of the Facilities is necessary to serve the development of the Property and to provide for appropriate traffic safety, convenience and circulation.

NOW, THEREFORE, the City and Owner do hereby covenant and agree as follows:

Section 1. Owner at its sole cost shall:

- a. Be responsible for the continuous and perpetual maintenance, repair and replacement, if necessary, of the Facilities; and
- b. Obtain all necessary permits required for the construction, maintenance, repair or replacement of the Facilities prior to performing any such work on the Facilities.

Section 2. The City is granted the right, but is not obligated, to enter upon the Property in order to inspect, maintain, repair or replace the Facilities if Owner fails to maintain, repair or replace the Facilities in accordance with the applicable City ordinances and regulations. In the event the City provides or performs any maintenance, repair, or replacement of the Facilities, the City may charge the costs for the same against Owner, who shall reimburse the City upon demand within thirty (30) days from the date of the billing. If payment is not made within thirty (30) days, the City may take any or all of the following actions:

- a. Assess a lien against the Property;

- b. Maintain suit against Owner for all costs incurred by the City; or
- c. Take any other action permitted by law.

Unless necessitated by a threat to life or safety, the City shall notify Owner not less than thirty (30) days before it begins any maintenance, repair, or replacement of the Facilities. Such notice shall contain a detailed description of the required maintenance, repair or replacement of the Facilities. Owner shall be afforded the opportunity to complete such maintenance, repair or replacement during such 30-day period. If Owner timely commences and diligently pursues to completion such maintenance, repair or replacement but the same cannot be reasonably completed during such 30-day period, Owner shall be afforded an additional reasonable amount of time to complete the same. Owner shall also have all rights to appeal the necessity of any such requirement for maintenance, repair or replacement as set forth under the applicable city codes or regulations.

Section 3. Owner shall not use nor attempt to use the Property in any manner which would interfere with the continuous and perpetual use, maintenance, repair or replacement of the Facilities. In particular, Owner shall not build thereon or thereover any structure which may interfere or cause to interfere with the use, maintenance, repair or replacement of the Facilities without the explicit written permission of the City as may be required under any applicable city code or regulation.

Section 4. Owner shall be and shall remain liable for and subject to all permits issued to any contractor(s) engaged by Owner or Owner's agent for the Facilities or related improvements under the terms of this Covenant until the permits issued have satisfied their performance and warranty surety requirements.

Section 5. All notices required by this Covenant shall be in writing sent by United States certified mail, postage prepaid, or commercial overnight courier and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Covenant has given ten (10) days notice of a change of person and address for purposes of notice under this Covenant to the other party in writing, notices shall have a prominent marking on the envelope stating "IMPORTANT LEGAL NOTICE" and be directed to the following:

Notice to the City:

Director Planning and Development Services
City Hall
8500 Santa Fe Drive
Overland Park, KS 66212

Notice to Owner:

c/o Price Brothers Management
12712 Metcalf Avenue, Suite 200
Overland Park, KS 66213
Attn: Douglas M. Price

EXHIBIT J-2

Section 6. This Covenant shall be binding upon the parties and their respective successors and assigns. It is the intention of the parties that this Covenant shall be a covenant running with the land and shall bind all successive owners of any interest in the Property.

Section 7. This Covenant shall not be amended, modified, canceled or abrogated without the prior written consent of the City. Any such amendment, modification, cancellation or abrogation shall be filed of record with the Johnson County, Kansas Department of Records and Tax Administration.

Section 8. Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 9. This Covenant shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 10. Upon the effective date of this Covenant, the City shall file this Covenant with the Johnson County, Kansas Department of Records and Tax Administration, and this Covenant shall be binding on Owner and Owner's successors and assigns.

Section 11. Owner shall jointly and severally release, hold harmless, indemnify and defend the City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Owner or to any person or property caused by or incidental as to the design, function, use, construction, maintenance, repair or replacement of the Facilities by Owner, or the Owner's failure to properly maintain, repair or replace the Facilities.

CITY OF OVERLAND PARK, KANSAS

[INSERT NAME OF OWNER]

By: _____
Jack D. Messer, P.E.
Director, Planning and Development Services

By: _____
Name: _____
Title: _____

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

MUNICIPAL CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jack D. Messer, P.E., Director of Planning and Development Services of the City of Overland Park, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the foregoing instrument on behalf of said City, and affix thereto the seal of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of said company, and acknowledged the execution of the same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

My appointment expires:

Exhibit "A"
Legal Description

EXHIBIT J-5

EXHIBIT K

INSURANCE SPECIFICATIONS

1. Worker's Compensation (as applicable). Developer may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. Developer will purchase and maintain with primary limits of \$3,000,000.
3. Automobile Liability (as applicable). Developer will purchase and maintain with primary limits of \$1,000,000.
4. Excess Liability. Developer will purchase and maintain excess liability insurance in an amount not less than \$5,000,000, which may be included with an umbrella policy covering the Overall Project Site and other properties.
5. Special Perils Form Property Insurance. Developer will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils, but only to the extent required by Developer's lender for the Project.