

**CONSENT TO COLLATERAL ASSIGNMENT AND AGREEMENTS CONCERNING  
SCHEELS PAYMENTS AND CONTINUOUS OPERATIONS COVENANTS**

THIS CONSENT TO COLLATERAL ASSIGNMENT AND AGREEMENTS CONCERNING SCHEELS PAYMENTS AND CONTINUOUS OPERATIONS COVENANTS ("Consent") is made as of May\_\_\_\_, 2013, by and among the CITY OF OVERLAND PARK, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and ASPEN SQUARE INC., a Kansas corporation, having an address of 7242 W. 121<sup>st</sup> Street, Overland Park, Kansas 66213 ("Developer") for the benefit of SCHEELS ALL SPORTS, INC., a North Dakota corporation ("Scheels") and GREAT SOUTHERN BANK, a Missouri chartered trust company ("GSB" or "Lender").

RECITALS:

A. Lender has agreed to make construction loan(s) to Developer (the "Construction Loans") for the development, construction and completion of certain improvements as contemplated in that Assignment, Assumption and Amended and Restated Development Agreement between Developer and City dated May 7, 2012 (the "Restated Development Agreement"), as amended by that certain First Amendment to Assignment, Assumption and Amended and Restated Development Agreement between the City and Developer dated March 4, 2013, (the "First Amendment to Development Agreement") each incorporated herein, including the defined terms therein, for all purposes by this reference; collectively, the Restated Development Agreement and the First Amendment to Development Agreement are referred to herein as the "Development Agreement";

B. The First Amendment to Development Agreement provides, in part, that upon Developer's attaining certain Performance Milestones as set forth on Exhibit K (2013) and Exhibit K-1 thereto, and provided for elsewhere in the First Amendment to Development Agreement, Developer will be entitled to receive reimbursements for certain Eligible Expenses from TDD sales tax revenue and CID sales tax revenue ("TDD/CID Revenue");

C. The Phase 1 Improvements (as defined in Exhibit K (2013) of the First Amendment to Development Agreement and related Performance Milestone have been completed and achieved, entitling Developer to the payment of a portion of the TDD/CID Revenue in accordance with the Performance Milestone provisions of the First Amendment to Development Agreement;

D. Scheels is acquiring from the Developer a parcel of land within the TDD District and CID District (the "Scheels Property") in order to construct a sporting goods store containing approximately 220,000 gross square feet of floor area (which square footage includes mezzanine space). However, pursuant to Recital F. of the First Amendment to Development Agreement, the parties agree that Developer is obligated to cause Scheels to construct a sporting goods store containing not less than 180,000 gross square feet of floor area (the "Scheels Store");

E. The First Amendment to Development Agreement authorizes \$17 million of the cost to construct the Scheels Store to be reimbursed as a CID Reimbursable Expense (the "Scheels Payment");

F. The First Amendment to Development Agreement contemplates that the Scheels Payment will flow from Developer to Scheels and not from the City directly to Scheels;

G. Pursuant to Section 10 of the First Amendment to Development Agreement, the parties agree that Developer shall require Scheels to open and thereafter continuously remain open for business, during normal retail hours and days as is customary for similar retail stores in the Johnson County, Kansas surrounding area for a continuous twenty five (25) year term (the "Scheels Continuous Operations Covenant"); provided, however: (a) the Scheels Continuous Operations Covenant shall be subject to unavoidable delays as well as to reasonable periodic and temporary closures for remodeling, refurbishing, re-fixturing and inventory; and (b) in no event shall Scheels be obligated to operate on Easter Sunday, Thanksgiving or Christmas. Under the terms of the First Amendment to Development Agreement, the City has no right to directly enforce the Scheels Continuous Operations Covenant against Scheels;

H. Pursuant to loan agreements and related security and other documents, including but not limited to collateral assignments of Developer's rights and obligations described herein between Developer and Lender (individually, "Loan Agreement" and, collectively, the "Loan Agreements"), and pursuant to other agreements between Developer and Scheels pertaining to the Scheels Payment, Lender and Scheels have required, and Developer has agreed, that as partial security for and in consideration of the making of the Construction Loans and entering into the related documents and other agreements, Developer shall pledge and assign to Lender and to Scheels Developer's interest in a portion of the TDD/CID Revenue. Additionally, pursuant to the Loan Agreement with Lender, Lender has required and Developer has agreed to pledge and collaterally assign to Lender Developer's right, title, interest and obligations as Developer under the Development Agreement as such collateral assignment is contemplated in Article V, Paragraph D of the Restated Development Agreement for the development of the improvements in the community improvement district and transportation improvement district provided for in the First Amendment to Development Agreement (the "TDD/CID");

I. Developer, Scheels and Lender have requested that the City: (i) acknowledge Developer's pledge and assignment to Lender and to Scheels as described in Recital H. of this Consent of Developer's interest in a portion of the TDD/CID Revenue; and (ii) agree to make disbursements of TDD/CID Revenue due to be paid to the Developer under the Development Agreement to the Developer in care of Lender as "Escrow Agent" for further disbursement as the parties have agreed pursuant to the terms of a separate escrow agreement to be executed between Developer, Lender and Scheels, or alternatively, agree to make disbursements of TDD/CID Revenue directly to Scheels as provided in Section 6 of this Consent;

J. Developer has also requested that the City's consent to Developer's collateral assignment to Lender of Developer's right, title, interest and obligations under the Development Agreement (the "Collateral Assignment") as additional security for the Lender's Construction Loan as such collateral assignment is contemplated in Article V, Paragraph D. of the Restated Development Agreement;

K. Developer and Scheels have requested that, notwithstanding any default on the part of Developer or Lender, in return for Scheels agreeing to (i) be directly bound to City to comply with the terms of the Scheels Continuous Operations Covenant, and (ii) pay a "Clawback

Payment" (as defined in Section 6 of this Consent), that the City will pay CID Revenue generated by the Scheels Store directly to Scheels to satisfy the Scheels Payment, up to an aggregate amount received by Scheels of \$17 million (the "Scheels Election"); and

L. The City, Developer, Scheels and Lender wish to enter into this Consent in order to evidence their agreements and consent to: (i) the pledge and assignment of the TDD/CID Revenue to Lender and to the mechanism for payment of such TDD/CID Revenue to Lender as "Escrow Agent", or to Scheels as provided in Section 6 of this Consent; (ii) the Collateral Assignment evidencing the collateral assignment of the Developer's right, title, interest and obligations as Developer under the Development Agreement; and (iii) the Scheels Election, pursuant to the terms and conditions of Section 6 of this Consent as more specifically set forth therein.

NOW THEREFORE, for and in consideration of the foregoing and the agreements herein provided, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals; Consent. The above Recitals are true, correct and agreed upon by the parties hereto and constitute a part of this Consent. Further, the City consents to:

a. the Collateral Assignment, and the pledge by Developer to Lender of Developer's right, title, interest and obligations (the "TDD/CID Rights") under the Development Agreement as security for Developer's obligations to Lender pursuant to the terms and conditions of the Lender's Loan Agreement and collateral documents, as the same may be amended from time to time by and between Developer and Lender; and

b. making payment of the TDD/CID Revenue, payable under the Development Agreement, to the Escrow Agent (pursuant to disbursement instructions provided by Developer to the Escrow Agent); and

c. making payment directly to Scheels as provided for in Section 6 of this Consent.

2. Attornment. If and to the extent that Lender should (A) exercise any or all of its rights and remedies under its Loan Agreement and collateral documents including the Collateral Assignment with Developer, and (B) expressly assumes in writing all of the Developer's rights, title, interests and obligations under the Development Agreement, (i) Lender will be bound by the obligations of the Developer with respect to the pledge and assignment of the TDD/CID Revenue to Scheels in satisfaction of the Scheels Payment, and (ii) the City will make full and complete attornment with respect to the TDD/CID Rights (without the necessity of any other or further attornment agreement or instrument) to (a) Lender or affiliates of Lender organized to hold the TDD/CID Rights (Lender's "Affiliates"), or (b) any receiver which Lender requests be appointed for the TDD/CID Rights and recognize such Lender or Affiliates as the Developer with respect to the TDD/CID Rights. Upon request, and at the Lender's expense, the City will execute and deliver to Lender such further documents, instruments and other writings, and will perform other acts as Lender deems reasonably necessary or desirable to confirm such attornment, and the Lender will execute and deliver to the City such further documents,

instruments or other writings as the City deems necessary or desirable to confirm the Lender's assumption of the Developer's obligations under the Development Agreement.

3. Payments by the City. Developer authorizes and directs the City to pay all TDD/CID Revenue which Developer is entitled to receive under the Development Agreement, (subject to the notice provisions set forth in Section 3.c below), to a separate, segregated account for the benefit of Developer in the care of Lender as the Escrow Agent (the "Collateral Agreement Account"), unless and until Scheels shall make the Scheels Election (defined in Section 6 hereof), in which event, Developer hereby authorizes and directs the City to pay TDD/CID Revenue directly to Scheels as provided in Section 6 of this Consent. Upon making the Scheels Election as defined below, the Scheels Payment shall be made by the City to Scheels in accordance Section 6 of this Consent. The City acknowledges the direction and assignment of the TDD/CID Revenue from Developer to Lender and the City agrees to pay all such TDD/CID Revenue to the Collateral Agreement Account as set forth herein or, with respect to CID Revenue generated by the Scheels Store, to Scheels in respect of the Scheels Payment in accordance with Section 6 of this Consent. Lender shall have the right and ability to utilize funds on deposit in the Collateral Agreement Account toward the repayment of funds due under the Loan Agreements and collateral documents and Scheels shall have the right and ability to utilize CID Revenues on deposit in the Collateral Agreement (or paid directly to Scheels as provided herein) in satisfaction of the Scheels Payment, provided however that (i) the TDD/CID Revenue is required to be used for payment or reimbursement of "Eligible Expenses" as defined in the First Amendment to Development Agreement, and accordingly, (ii) Lender's and Scheels' application for any such TDD/CID Revenue shall be limited and restricted to pay Eligible Expenses pursuant to the Development Agreement, (iii) the TDD/CID Revenue is further limited and conditioned as set forth in the Development Agreement, and (iv) Scheels understands and agrees that it shall not be entitled to any reimbursement of TDD Revenues whatsoever as to the Scheels Payment. So long as Developer is in compliance with the terms and provisions of the Development Agreement, with respect to such payments:

a. The direct payment to the Escrow Agent by the City of the TDD/CID Revenue due from time to time shall discharge the City's payment obligations under the Development Agreement to the extent such payments are made and thereafter the City shall have no further liability to the Developer (or Scheels) for the amount of such sums so paid directly to the Collateral Agreement Account.

b. With respect to the Phase 1 Improvements (which have been completed) and with respect to the Phase 2 Improvements (as defined in Exhibit K (2013) of the First Amendment to Development Agreement) when completed, including but not limited to the Scheels' Store, and subject to the terms and conditions set forth in this Consent and the First Amendment to Development Agreement, Developer or its permitted assigns as provided herein shall be entitled to the payment of the reimbursements from TDD/CID Revenue as and when collected by the City as required by the Development Agreement in the amounts attributable to the completion of Phase 1 and Phase 2, respectively, as reflected on Exhibit K (2013) to such First Amendment to Development Agreement.

c. Upon receipt of written notice delivered to the City by: (i) Developer and Escrow Agent of the satisfaction of Developer's obligations secured by the Collateral

Assignment and this Consent; and (ii) Scheels as to Developer's obligations relative to the Scheels Payment, the Collateral Assignment Agreement and this Consent shall terminate. Provided, however, in the event of a Scheels Election as set forth in Section 6 of this Consent, then this Consent shall terminate as to Scheels only upon payment in full to Scheels of the Scheels Payment. Upon such payment in full, all future TDD/CID Revenue, if any, shall be paid to the Developer to the extent Developer is entitled to receive such TDD/CID Revenue, if any, under the Development Agreement.

4. Notice of Developer Default – Right to Cure. Concurrently with providing notice to Developer as required by the Development Agreement, and subject to the terms of Section 7 of this Consent, the City agrees to provide Lender and Scheels with any notices of default issued by the City to Developer pursuant to Article VII.C of the Restated Development Agreement ("Default Cure Notice"). The City further agrees to provide written notice to Lender and to Scheels ("Default Notice") promptly of the City's determination that Developer has failed to diligently pursue or exercise its rights to cure any alleged default and that the City has deemed Developer to be in default under the Development Agreement ("Default"). Concurrently with the City's issuance of the Default Notice, the City agrees to provide Lender with sixty (60) days from the date of issuance of the Default Notice to exercise its rights under this Consent, including Lender's right to petition the City for extensions of time for performance pursuant to Section VII.G of the Restated Development Agreement. Prior to expiration of said 60-day period, Lender shall also notify the City and Scheels in writing in the event that Lender does not elect to exercise its rights under this Consent.

5. Collateral Assignment. Upon Lender's notifying City and Scheels in writing of its intent to undertake to exercise the Collateral Assignment as to Developer's rights and obligations under the Development Agreement and cure the Default, the City agrees to accept Lender's performance in curing any existing default on behalf of Developer and in taking such action as is permitted Developer to take under Article VII of the Restated Development Agreement in anticipation of such Lender's or its affiliate's formally assuming in writing the Developer's rights and obligations as contemplated herein. Developer authorizes the City to accept such performance and to enter into such agreements with Lender and Developer as may be appropriate to give effect to the intent of Article VII, including agreeing to the extension of such times for performance as may be needed and permitted due to Excusable Delay or by mutual agreement of the City, Developer and Lender. If Lender elects to exercise its rights under this Collateral Assignment and cure the Default, then concurrently with providing notice to Lender as required by the Development Agreement, and subject to the terms of Section 7 of this Consent, the City agrees to provide Scheels with any notices of default issued by the City to Lender pursuant to Article VII.C of the Restated Development Agreement ("Lender Default Notice"). The City further agrees to provide written notice to Scheels promptly of the City's determination that Lender has failed to diligently pursue or exercise its rights to cure any alleged default and that the City has deemed Lender to be in default under the Development Agreement ("Lender Default".)

6. Scheels Election. If a Default Notice is issued and (i) Lender does not elect to exercise its rights under this Collateral Assignment and cure the Default, (ii) Lender elects to exercise its rights under this Agreement and cure the Default, but subsequently a Lender Default Notice is issued, or (iii) the Default or Lender Default as the case may be has not been cured

within a period of one hundred eighty (180) days after the Default Notice was issued (the "Cure Period"), City shall be obligated to make payment on the Scheels Payment under this Section 6 if, and only if Scheels during the Cure Period: (a) elects to continue receiving such payments of CID Revenues by providing written notice to the City; and (b) delivers to the City the "Continuous Operations Agreement" attached hereto as **Exhibit A** (collectively, the "Scheels Election".) By making the Scheels Election Scheels will be ratifying and confirming the Scheels Continuous Operations Covenant and will be further agreeing to pay the Clawback Payment (as defined herein) if Scheels shall thereafter breach the Continuous Operations Covenant. By ratifying the Scheels Continuous Operations Covenant, the City will be in privity of contract with Scheels and entitled to directly enforce the Scheels Continuous Operation Covenant. The Continuous Operations Agreement contains a clawback provision in favor of the City which would require Scheels to make a fair and reasonable liquidated damages payment to the City in an amount of up to \$17,000,000 if Scheels were to breach its Continuous Operations Covenant (the "Clawback Payment"). Within twenty (20) days after providing City with the Continuous Operations Agreement, Scheels shall also provide written notice to the City, verified by the Escrow Agent or such other third party acceptable to City in its sole discretion of any amounts which have been paid to Scheels in partial satisfaction of the Scheels Payment and state in such written notice the balance of the Scheels Payment owed. The Escrow Agent agrees to provide such information to City with the cooperation and assistance of Scheels. Upon receipt of the Continuous Operations Agreement, and provided that Scheels is not in default of the Continuous Operation Agreement thereafter, the City agrees to continue to collect CID Revenue and make direct payments to Scheels of such CID Revenues as are generated from the Scheels Store (but not from the balance of the CID District) until the Scheels Payment has been paid in full without the necessity of Scheels assuming any of Developer's obligations under the First Amendment to Development Agreement as a condition to payment. City's agreement to collect and make payment of the CID Revenue in respect of the Scheels Payment as provided in this Section 6 shall in no way limit or preclude any election of remedies by City under the Development Agreement in the event of a default on the part of Developer or Lenders.

7. Copies of Notices. The City hereby agrees to provide to Lenders, at the notice address for Lender and Scheels set forth below, copies of all written notices and demands under the Development Agreement or otherwise with respect to the rights to receive TDD/CID Revenue sent or received by the City from or to Developer. However, the parties understand and agree that the City shall not be in default or liable to Lender, Scheels or Developer if the City should fail to deliver any such notice.

All notices and requests required pursuant to this Assignment shall be in writing and shall be sent as follows:

To the City:	City Manager City of Overland Park 8500 Santa Fe Drive Overland Park, KS 66212
With copies to:	Deputy City Manager City of Overland Park

8500 Santa Fe Drive  
Overland Park, KS 66212

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

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

To the Developer: Aspen Square, Inc.  
c/o Michel Schlup  
7242 W. 121<sup>st</sup> Street  
Overland Park, KS 66213

With a copy to: Aaron G. March, Esq.  
White Goss Bowers March Schulte & Weisenfels  
4510 Belleview, Suite 300  
Kansas City, MO 64111

To Scheels: Scheels All Sports, Inc.  
Attn: Steve D. Scheels  
4550 15th Avenue South  
Fargo, ND 58103

With a copy to: Barnes & Thornburg LLP  
Attn: Stephen Hickock  
225 South 6<sup>th</sup> Street, Suite 2800  
Minneapolis, MN 55402-4662

To the Lender: Great Southern Bank  
Attn: Dustin Hickel  
10801 Mastin Boulevard, Suite 222  
Overland Park, KS 66210

With a copy to: Bryan Cave LLP  
Attn: Michael J. Royle, Esq.  
1200 Main, 35<sup>th</sup> floor  
Kansas City, MO 64105

With a copy to: Escrow Agent  
Great Southern Bank  
10801 Mastin Boulevard, Suite 222  
Overland Park, KS 66210

8. Miscellaneous.

a. Capitalized words and phrases not otherwise defined in this Consent shall have the meanings assigned to such terms in the Agreement.

b. Lender does not, by virtue of this Consent or the Collateral Assignment, either assume nor have they any obligation to the City to exercise their rights under the Development Agreement or to declare an Event of Default under their Loan Agreements, the option to exercise such rights or declare an Event of Default resting in the sole and absolute discretion of Lender. If Lender exercises their rights under the Development Agreement, the City agrees that Lender shall have no personal obligations or liabilities to the City with respect to the Development Agreement, the City's recourse being limited to Lender's interest in the real estate which is the subject of the Development Agreement.

c. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Kansas (without giving effect to the conflicts of law provisions thereof).

d. This Consent may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

e. Notwithstanding anything set forth herein which is seemingly to the contrary, nothing herein shall be deemed to amend, modify or waive any of the terms and conditions of the Development Agreement.

f. This Consent may be executed in counterparts.

**[Signature page follows]**



**Signature Page to Consent to Collateral Assignment and Agreements Concerning  
Scheels Payments and Continuous Operations Covenants**

IN WITNESS WHEREOF, the City has caused this Consent to be duly executed as of the  
year and date first set forth above.

**THE CITY OF OVERLAND PARK,  
KANSAS**

Attest:

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

\_\_\_\_\_  
Marian Cook, City Clerk

Approved as to Form:

\_\_\_\_\_  
Tammy M. Owens, Deputy City Attorney

Approved as to Form:

\_\_\_\_\_  
Todd A. LaSala, Esq., Stinson Morrison Hecker LLP

**ASPEN SQUARE INC.,**  
a Kansas corporation

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

**SCHEELS ALL SPORTS INC.,**  
a North Dakota corporation

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

**GREAT SOUTHERN BANK,**  
a Missouri chartered trust company

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

**EXHIBIT A**  
**Continuous Operations Agreement**

THIS CONTINUOUS OPERATIONS AGREEMENT (the "Agreement") is made as of \_\_\_\_\_, 20\_\_\_\_, by and among the CITY OF OVERLAND PARK, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and SCHEELS ALL SPORTS, INC., a North Dakota corporation ("Scheels").

A. On or about May \_\_\_\_ 2013, the City and Scheels, along with Aspen Square Inc. ("Developer") and Great Southern Bank ("Lender") entered into that certain Consent to Collateral Assignment and Agreements Concerning Scheels Payments and Continuous Operations Covenants (the "Consent").

B. The Development Agreement (as defined in the Consent) provides that \$17,000,000 of the costs to construct Scheels' store at Corbin Park shall be a CID Reimbursable Expense which is to be paid and reimbursed to Scheels with the revenues of the Corbin Park community improvement district (the "Scheels Payment").

C. Pursuant to Paragraph 6 of the Consent, Scheels has certain rights to elect to continue collecting such payments of certain CID Revenues by providing written notice to the City of such election and entering into this Agreement as more particularly set forth therein.

D. Accordingly, the parties hereby agree to enter into this Agreement subject to the terms and conditions set forth herein.

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

1. Scheels hereby elects to ratify the Scheels Continuous Operations Covenant (as defined herein) and hereby agrees that the City shall hereafter be in privity of contract with Scheels and entitled to directly enforce the Scheels Continuous Operations Covenant in return for the City continuing to collect and pay CID Revenue generated by the Scheels Store and to make the Scheels Payment directly to Scheels as contemplated by Section 6 of the Consent. As of the date of this election, Scheels has received \$\_\_\_\_\_ as and towards the Scheels Payment.

2. Scheels hereby agrees with the City to open and thereafter continuously remain open for business, during normal retail hours and days as is customary for similar retail stores in the Johnson County, Kansas surrounding area for a continuous twenty five (25) year term (the "Scheels Continuous Operations Covenant"); provided, however: (a) the Scheels Continuous Operations Covenant shall be subject to unavoidable delays, as well as to reasonable periodic and temporary closures, for remodeling, refurbishing, re-fixturing and inventory; and (b) in no event shall Scheels be obligated to operate on Easter Sunday, Thanksgiving or Christmas.

3. The parties agree that Scheels agreement to be bound by the Scheels Continuous Operations Covenant goes to the essence of the parties' agreement hereunder, and that any failure to perform such obligations will result in damages to the City that are extremely difficult and impractical to determine and for which the City's remedies at law will not be adequate. Accordingly, as a fair and reasonable estimate and liquidation of the City's damages and not a penalty, if Scheels fails to satisfy the terms of the Scheels Continuous Operations Covenant, Scheels shall pay the City an amount equal to (i) the amount that Scheels has actually received from CID Revenues at such time (in the event that the Clawback Payment is due before such time as Scheels has been paid 100% of the Scheels Payment); or (ii) \$17,000,000 (in the event that the Clawback Payment is due after such time as Scheels has been paid 100% of the Scheels Payment) (the "Clawback Payment.") Notwithstanding the foregoing, the Clawback Payment shall be reduced by \$775,000 for each and every Credit Year (defined below). For purposes hereof, a "Credit Year" shall mean each consecutive twelve (12) month period that Scheels satisfies its obligations under the Scheels Continuous Operations Covenant, with the first Credit Year commencing on the date that the Scheels Payment has been fully funded.

4. By way of illustrative examples only, and assuming that the Scheels Payment is or would be fully funded by CID Revenues on July 1, 2023, then the following would be the Clawback Payment that would be owed by Scheels to the City as described in Section 3 above if Scheels were to breach its Continuous Operations Covenant at the intervals set forth below:

(a) If Scheels should be in breach of its Continuous Operations Covenant on October 1, 2019 (during the 5<sup>th</sup> year of Scheels operations and prior to Scheels receipt of 100% of the Scheels Payment), then the Clawback Payment will be equal to the amount that Scheels has actually received from CID Revenues as of October 1, 2019. Accordingly, if Scheels has received an amount equal to \$6,575,000 in CID Revenues as of October 1, 2019, the Clawback Payment shall be \$6,575,000. If, however, Scheels has received an amount equal to \$5,500,000 in CID Revenues as of October 1, 2019, the Clawback Payment shall be \$5,500,000.

(b) If Scheels should be in breach of its Continuous Operations Covenant on October 1, 2026 (during the 12<sup>th</sup> year of Scheels operations and more than 3 years after Scheels receipt of 100% of the Scheels Payment on July 1, 2023), then the Clawback Payment owed by Scheels would be \$14,675,000 – an amount which is the result of \$17,000,000 after subtracting three (3) Credit Years of Clawback Payment reductions at \$775,000 for each such Credit Year.

(c) If Scheels should be in breach of its Continuous Operations Covenant on October 1, 2036 (during the 22<sup>nd</sup> year of Scheels operations and more than 13 years after Scheels receipt of 100% of the Scheels Payment on July 1, 2023), then the Clawback Payment owed by Scheels would be \$6,925,000 – an amount which is \$17,000,000 after subtracting thirteen (13) Credit Years of Clawback Payment reductions at \$775,000 for each such Credit Year.

5. Scheels acknowledges that the acceptance by the City of such Clawback Payment shall not be deemed permission for Scheels to continue such violation, and shall not preclude the City from seeking any other remedy (other than damages) for such violation including, without limitation, specific performance.

6. Copies of this election are being provided in writing to:

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

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

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

7. All payments due and owing to Scheels under this Scheels Continuous Operations Covenant Election shall be made c/o Scheels All Sports, Inc., Attn: Steve D. Scheels, 4550 15<sup>th</sup> Avenue South, Fargo, ND 58103.

8. In connection with this Agreement, the parties hereby agree as follows:

- (a) In any subsequent court action in which the validity or the effect of this Agreement is at issue, the party prevailing in such action shall be entitled to its costs, expenses and reasonable attorney's fees in prosecuting or defending such action.
- (b) The parties hereto declare and represent that no promises, inducements or agreements not herein expressed have been made, that this Agreement contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not mere recitals.
- (c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. For purposes of this Agreement, the holder of any mortgage or other security instrument secured by the Scheels Property (as defined in the Consent) shall be a "Mortgagee". Notwithstanding anything contained in this Agreement or any other agreement between Scheels and the City to the contrary, no such Mortgagee, by virtue of solely being a Mortgagee, shall have any obligation to comply

with Scheels' obligations as specified in this Agreement.

- (d) All remedies at law or in equity shall be made available for the enforcement of this Agreement.
- (e) This Agreement may be executed in counterparts.
- (f) This Agreement shall be construed in accordance with the laws of the State of Kansas.

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

**SCHEELS ALL SPORTS, INC.,**  
a North Dakota corporation

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

**CITY OF OVERLAND PARK, KANSAS**

**ATTEST:**

\_\_\_\_\_  
Carl Gerlach, Mayor

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy City Attorney