

## FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the “Agreement”) is entered into this \_\_\_\_\_, 2013, between St. Andrews 133 Land Company, LLC (the “Developer”), and the City of Overland Park, Kansas (the “City”).

### RECITALS

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by K.S.A. 12-17,140 *et seq.*, as amended (the “TDD Act”), to provide financing for certain qualified projects upon compliance with the procedures set forth in the TDD Act.
- B. Developer is the owner of certain real property generally located on the northwest corner of 135<sup>th</sup> Street and Melrose Street, as more particularly set forth on Exhibit A attached hereto (the “Site”).
- C. The Developer has requested that the City review and consider the modification of a transportation development district previously created at that location (hereinafter referred to as the “St. Andrews TDD”) (the “Request”). In order to do so, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, and the City requires that the Developer pay and reimburse the City for the payment of such reasonably incurred costs.
- D. In order for the City to fully consider and evaluate the Request, the City requires that the Developer deposit funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Request and engage consultants as needed for such evaluation and to provide services described in Section 2 of this Agreement. If the Request is approved, the City will continue to incur similar costs and expenses to represent the City’s interests in documenting and implementing the various aspects of the Request, and other related tasks, documents and issues.
- E. By execution of this Agreement, the Developer is asking the City to retain outside counsel and consultants in order to evaluate, consider and, if approved, to implement the Request. The Developer agrees, represents and warrants that any information provided to the City in its evaluation of the Request shall be accurate and complete to the best knowledge of the manager or member of the Developer providing such information.

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

#### 1. Recitals

The recitals set forth above are hereby incorporated as though more fully set forth herein.

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

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

(a) Consider the Request, including without limitation, the possible modification of the Village of St. Andrews TDD, and the related TDD assessments including giving all notices, making all publications, preparing and/or review any studies and analyses necessary or appropriate in connection with the consideration of the Request, holding any hearings required by the TDD Act and, if appropriate, preparing the required resolutions and ordinance necessary for the Governing Body of the City to consider the Request; and

(b) Preparing and negotiating a draft development agreement; and

(c) If approved by the Governing Body (in its sole discretion), to implement the various aspects of the Request.

**3. Payment.**

The Developer shall pay the City for its fees and expenses; the time of its administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in **Section 2** (the "Charges"), subject to the following conditions:

(a) In order to insure the prompt and timely payment of the Charges, the Developer shall establish a fund (the "Fund") by paying the initial amount of Ten thousand and 00/100 dollars (\$10,000.00). Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Developer on a monthly basis. If, in the judgment of the City, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred, the Developer shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City is required to provide sufficient funds to pay the projected Charges.

(b) If the amount in the Fund is insufficient to pay the outstanding Charges payable hereunder, the Developer shall pay such Charges within twenty (20) days of receipt of a statement from the City of the amount required to pay such Charges. All statements shall be reasonably itemized and shall be payable within twenty (20) days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(c) The City's special counsel, Stinson Morrison Hecker LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder. The City's Bond Counsel, Kutak Rock LLP,

shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder, other than for legal services rendered in connection with the issuance of any bonds that may be issued to finance the TDD project.

**4. Termination.**

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

(b) This Agreement shall automatically terminate if the Governing Body of the City elects at any time not to further consider the Request.

(c) The Developer may terminate this Agreement in the event it determines not to proceed further with the Request upon written notice to the City thereof and payment of any Fund Shortfall (as defined below); provided however, that Developer understands and agrees that it may not terminate this Agreement if the Request is approved by the Governing Body and the City has begun the implementation of the various aspects of the Request.

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

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

The Developer acknowledges that the City is not obligated by the execution of this Agreement to approve the Request and the approval of the Request, the imposition of the associated TDD assessment is subject to the sole discretion of the Governing Body of the City and the requirements of the TDD Act, including the filing of a valid petition.

**6. Notice.**

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

To the City:

Kristy Stallings  
Deputy City Manager  
City of Overland Park, Kansas

City Hall  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

And

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

With a copy to:

Todd LaSala  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106

And

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

To the Developer:

St. Andrews 133 Land Company, LLC  
1551 Wall Street, Suite 220  
St. Charles, MO 63303

With a copy to:

Evan F. Fitts  
Polsinelli, PC  
700 W. 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112

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

7. **Governing Law.**

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

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

**St. Andrews 133 Land Company, LLC**

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

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_ of **St. Andrews 133 Land Company**, a limited liability company duly organized and existing under and by virtue of the laws of Kansas; who is personally known to me to be \_\_\_\_\_ and who is personally known to me to be the same person who executed as such \_\_\_\_\_ the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

MY APPOINTMENT EXPIRES:  
  
\_\_\_\_\_

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**

**The Site**

(To be updated and distributed on or before Monday, May 20<sup>th</sup>, 2013)