

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2013, between Hawthorne Plaza, LLC, (the "Applicant"), 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 the Community Improvement District Act, K.S.A. 12-6a26 *et seq.*, as amended (the "CID Act"), to provide financing for certain qualified projects upon compliance with the procedures set forth in the CID Act.
- B. The Applicant is a Delaware limited liability company and is the owner of certain real property generally located on the southwest corner of 119th Street and Roe Avenue, as more particularly set forth on Exhibit A attached hereto (the "Site").
- C. The Applicant has requested that the City review and analyze the Applicant's request to consider the establishment of a community improvement district (as defined in the CID Act, hereinafter referred to as the "CID") (the "Request"), in accordance with the CID Act. 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 Applicant pay and reimburse the City for the payment of such costs.
- D. In order for the City to fully consider and evaluate the Request, the City requires that the Applicant 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 Applicant is asking the City to retain outside counsel and consultants in order to evaluate, consider and, if approved, to implement the Request. The Applicant 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 Applicant 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 it, in its sole discretion, deems necessary to:

(a) Consider the establishment of the CID and the imposition of CID sales tax in accordance with the provisions of the CID Act, give all notices, make all publications, prepare and/or review any studies and analyses necessary or appropriate in connection with the consideration of the establishment of the CID and the proposed imposition of the CID sales tax, hold all hearings as required by the CID Act and prepare the required resolutions and ordinance to consider the establishment of the CID and impose the CID sales tax;

(b) Prepare and negotiate a draft development agreement between the parties for possible implementation of the CID project; and

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

3. Payment.

The Applicant 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 ensure the prompt and timely payment of the Charges, the Applicant shall establish a fund (the "Fund") by paying the initial amount of Ten Thousand and 00/100 Dollars (\$10,000.00) to the City contemporaneous with the execution of this Agreement. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Applicant 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 Applicant 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 Applicant 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 CID project.

4. **Termination.**

(a) The City may terminate this Agreement upon ten (10) days written notice in the event the Applicant 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 Applicant 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).

(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 Applicant 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 Applicant 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 creation of the CID District.**

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish the CID and that the creation of the CID and the imposition of the associated CID sales tax is subject to the sole discretion of the Governing Body of the City and the requirements of the CID 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:

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

To the Applicant:

Doug Grossenbacher
c/o CBRE – Asset Services
4717 Grand Avenue, Suite 500
Kansas City, MO 64112

With a copy to:

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

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.

HAWTHORNE PLAZA, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF)
) ss.
COUNTY OF)

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 HAWTHORNE PLAZA, LLC, a limited liability company duly organized and existing under and by virtue of the laws of Delaware; who is personally known to me to be the _____ and who is personally known to me to be the same person who executed as such _____ 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

MY APPOINTMENT EXPIRES:

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.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM:

By: _____
Tammy M. Owens
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF CID

Lots 1, 2, 3, 4, and 5, Hawthorne Valley Plaza Replat, a subdivision located in the City of Overland Park, Johnson County, Kansas, and all adjacent right-of-way.