

**2/13/14 EXECUTIVE SUMMARY**  
**CITY PLACE DEVELOPMENT AGREEMENT**

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1. **Parties.** The City of Overland Park, Kansas (the "City") and a new Kansas limited liability company called College 69 Associates, LLC ("Developer"). BK Properties, LLC, is the managing member of the Developer and BK Properties is an entity that has the Kenneth G. Block Trust as its sole member and manager.

2. **Nature of the Agreement.** Generally, this is an agreement to realign Switzer Road, and to create a transportation development district ("TDD") and community improvement district ("CID") on approximately 93 acres of vacant ground that is currently owned by B.F. Saul, but would be sold to the Developer in the immediate future. Developer anticipates the development and construction of a mixed use project within the TDD and CID, including (among other things) first class retail offerings, Class A office space, luxury residential units and a senior living facility. The City would, at the City's expense, relocate Switzer Road to bisect the Developer's site, and the Developer would, at its expense, pay to construct 113<sup>th</sup> Street and Indian Creek Parkway and other infrastructure that would benefit the project.

3. **The Developer's Project.** In Section 2.01, Developer agrees to build (a) approximately 39,860 square feet of first class, mixed-use shopping, which would include specialty and boutique shops, restaurants and other retail concepts, (b) at least 4 new office buildings containing approximately 600,250 square feet of Class A office space, (c) approximately 1,382 units of first-class, luxury residential in 15 separate apartment buildings, and some units above a mixed-use retail building – which is to be of the same or better quality than the Mission Farms development (the "MXD"), and (d) 140 units of high-quality senior living facilities. The project also includes structured parking facilities, including a parking structure within the MXD and the construction of 113<sup>th</sup> Street and Indian Creek Parkway to service the Project Site.

4. **Project Milestones.** In Section 2.05, Developer agrees to construct the Improvements that comprise the Project on a defined schedule, which is detailed on Exhibit I. If the Developer fails to meet these Performance Milestones, the City may require the Developer to appear before the governing body to show cause about why it failed to meet the deadlines and if it does not show cause for the delay which is reasonably satisfactory to the City, the City has its rights and remedies under the Agreement (as discussed in detail below).

5. **Switzer Road.** The City agrees, in Article III of the document, to engineer and construct a realigned Switzer Road to bisect the Developer's Project Site. The City will pay all of the costs for the design and construction of the relocated Switzer Road, and the City will hold the contracts with the engineers and contractors for Switzer. However, Developer will serve as the design and construction manager of the Switzer project and will coordinate the construction of Switzer with the other infrastructure work to be performed simultaneously on the Project Site. The Developer will only receive a \$100.00 construction management fee for serving in this role for the City. Article III and Exhibit M to the Agreement provide significant detail about the Developer's scope of services for this design and construction management role, while at the same time making clear that the City has ultimate responsibility and control of the Switzer Road project. The City will not be required to commence design/engineering work on Switzer until the Developer has (i) closed on the Project Site with B.F. Saul, (ii) commenced construction of 113<sup>th</sup> and Indian Creek Parkway and (iii) have pulled construction permits for at least one of the multi-family residential buildings. The City also agrees, in Section 3.05, to swap (without any payment) the vacated right-of-way from the current Switzer alignment in exchange for the right-of-way necessary for the new Switzer alignment through the Developer's Project Site.

6. **The CID.** Developer owns all of the property that comprises the district and the CID would provide for special assessments of approximately \$0.15 per square foot of land areas for each of the various parcels or projects within the district, which assessments would last for a period of 20 years. Based on these CID special assessments, it is anticipated that the City will issue approximately \$6,031,428 of CID Bonds, which

would yield approximately \$5,078,242 of net CID Bond Proceeds that could be used by Developer to pay for the costs of 113<sup>th</sup> Street, Indian Creek Parkway and other transportation related costs as set forth on Exhibit O.

7. The TDD. Developer owns all of the property that comprises the TDD, and this district is identical to the CID. The TDD would provide for a 1% additional sales tax for a period of up to 22 years. The TDD will be pay-as-you-go only, with no opportunity to issue bonds. The Developer may receive TDD sales tax revenues for eligible project costs related to the structured parking facility within the MXD, up to a TDD Cap of \$7,160,000. The projected TDD costs are shown on Exhibit P to the Development Agreement.

8. EDRBs. Section 4.06 of the Agreement provides for the issuance of economic development revenue bonds (“EDRBs”) for the limited purpose of obtaining an exemption on sales taxes on construction materials, equipment and furnishings. These EDRBs, for purposes of this Agreement, are not to be used for abating the ad valorem taxes on the Project Site.

9. Payment of City's Costs/Administrative Fee. Section 10.01 of the Agreement requires that the Developer will pay the City's costs for negotiating this agreement and implementing the CID and TDD. More specifically, it provides for (i) an Administrative Fee of 1% of the par amount of any CID Bonds issued for the Project, and (ii) an Administrative Fee in an amount equal to the greater of \$5,000 or 1% of the TDD Sales Tax collected during any year of the Agreement on an ongoing basis.

10. Assignment Rights. In Section 6.01, the parties generally agree that Developer may not assign this Agreement without the approval of the City's governing body (in your sole discretion). However, Section 6.03 allows certain assignments by Developer without City consent or approval – namely, (a) transfers to Developer's affiliates (which, based on Developer’s plans, is very likely to occur with the formation of a different investment group for each particular component and/or building in the Project), (b) security interests granted to construction or permanent lenders, and (c) sales or leases to retail tenants and operators in the normal course of business. Also, if Developer desires to sell portions of the Project, the buyer of that portion will enter into a short Assumption and Acknowledgement Agreement (the form of which is attached to the Agreement as Exhibit N), which puts the City into a direct contractual relationship with the buyer of that portion of the Project, and:

(i) if the sale occurs prior to completion of the building or improvements on that portion, the City will have a right to approve such sales, provided that the City will not unreasonably withhold its approval if the proposed buyer has the necessary qualifications and financial responsibility to build and operate that portion of the Project, and

(ii) if the sale occurs after completion of the building or improvements on that portion, the City will get notice of the sale, but will not have an approval or right to consent to the sale.

11. Use and Operation. Developer agrees, in Article VIII, to comply with the City's typical use and operations requirements, including obligations to properly maintain, insure and operate the Project, and including obligations to pay all of its taxes in the City and to comply with law.

12. Civic and Community Participation. In Section 8.09, Developer agrees, during the term of this Agreement, to actively participate in civic, charitable, educational, and economic development endeavors in Overland Park. Specifically, Developer must, at minimum, (a) be a dues-paying member in good standing with the Overland Park Chamber of Commerce and the Economic Development Council, and (b) make a donation of not less than \$1,000 annually to the Overland Park Arts and Recreation Foundation.

13. Default and Remedies. In Section 9.03 of the Agreement, the parties agree that if the Developer shall default, then 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 any previously-issued CID Bonds 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, and/or (iii) terminate this Agreement. In addition to the foregoing, and the City's other normal and customary default and remedies provisions, the Developer has agreed, in Section 3.03 of the Agreement, to pay certain "Switzer Damages" if it fails to construct certain minimum improvements on a defined schedule as more specifically described below:

(a) Developer covenants to pay Switzer Damages to the City if Developer has not, by December 31, 2024, built (i) at least 10,000 square feet of retail space, and (ii) at least 75,000 square feet of office space, and (iii) at least 500 units of multi-family residential space, and (iv) at least 100 units of Senior Living space. This December 31, 2024 deadline may be extended by up to 2 years by the City Council, in its discretion, if the Developer appears before the governing body and shows cause for the delays.

(b) The Switzer Damages are an amount equal to 50% of the costs of building the Switzer Road realignment (as described above). So, if the relocated Switzer costs the City \$8,000,000, for example, the Switzer Damages would be equal to \$4,000,000. However, the Switzer Damages shall be reduced by 25% for each of the components described in (a)(i) through (a)(iv) above which are built by Developer. In other words, if the Switzer Damages start at \$4,000,000, and Developer completes at least 500 units of multi-family, then the Switzer Damages will be reduced by 25% -- and shall thereafter be \$3,000,000. If the Developer builds 500 units of multi-family and 75,000 square feet of office, the Switzer Damages will be reduced by 50% -- and shall be \$2,000,000 in this example.

(c) The City agrees that if Developer builds as much as 200,000 square feet of office space, then the Switzer Damages will be waived altogether, regardless of whether or not the other components of the Project are constructed. Also, the Developer can elect not to build the 100 units of Senior Living space, if it instead increases its construction of the other components of the Project by defined amounts.

(d) In response to the City's questions about whether or not the Developer would have the financial wherewithal to pay the Switzer Damages 10 years from now, the Developer has agreed to provide regular appraisals and reports about the level of Developer's equity in the portions of the Project Site owned by Developer and a limited, "springing" guaranty from BK Properties if and to the extent that Developer's equity in the land is ever less than 200% of the potential Switzer Damages that are outstanding at that time. The springing BK Properties guaranty is attached as Exhibit J and only becomes effective if and to the extent that Developer's equity in the land is less than 200% of the Switzer Damages, in which event the guaranty is limited to 50% of the difference between the value of Developer's equity and an amount equal to 200% of the potential Switzer Damages. Section 3.03(d) provides a detailed example of how this springing guaranty might become effective and the potential amount of the guaranty.