

CITY PLACE DEVELOPMENT AGREEMENT

THIS CITY PLACE DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of February, 2014 (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 **COLLEGE 69 ASSOCIATES, LLC**, a Kansas limited liability company (the "Developer").

RECITALS:

A. Developer is the owner of certain real property which is located in the City and is bounded on the North by College Boulevard, on the East by U.S. Highway 69, on the South by 115th Street and on the West by Neiman Road, a general boundary map of which is set forth on Exhibit A attached hereto (the "Project Site").

B. Developer wishes to develop the Project Site and therefore wishes to design, develop and construct certain new facilities on the Project Site, including first-class luxury apartment buildings, Class A office buildings and a mixed-use retail and residential facility, together with certain other improvements as described in Recitals C and D below, and all as more particularly set forth in Article II and Article III below (the "Project").

C. The Project shall also include certain infrastructure improvements, including the construction of transportation-related improvements for the construction of a structured parking facility (the "TDD Improvements"), which TDD Improvements are more particularly described in Section 2.01 below. The Project shall include certain road improvements and related infrastructure, including the construction of 113th Street and Indian Creek Parkway (the "CID Improvements"), which CID Improvements are more particularly described in Section 2.01 below.

D. The Project shall also include the relocation and realignment of Switzer Road (the "Switzer Improvements") as more particularly described in Section 3.01 below. Developer and the City understand and agree that the Switzer Improvements are dependent on the construction of the TDD Improvements and the balance of the Project and will not be constructed in the absence of the TDD Improvements and the Project.

E. The City has the authority to create transportation development districts ("TDD") pursuant to K.S.A. 12-17,140 *et seq.*, as amended from time to time (the "TDD Act") for the purpose of financing certain transportation-related projects. Under the TDD 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 a TDD sales taxes ("TDD Sales Tax") to pay for or reimburse the costs of a portion of a TDD project.

F. The City has the authority to create a community improvement district ("CID") pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the "CID Act") for the

purpose of financing certain economic development related projects. Under the CID Act, the owners of the land within the boundaries of a proposed CID may petition the City to request the creation of a CID and to impose special assessments ("CID Assessments") to pay for or reimburse the costs of a portion of a CID project.

G. On or about February 12, 2014, Developer submitted a CID Petition (the "CID Petition") to the City requesting the formation of a CID encompassing the Project Site (the "CID District"), a legal description of which is set forth on Exhibit B-1 and the boundaries of which are depicted on Exhibit B-2 attached hereto. The CID District is for the construction of 113th Street and Indian Creek Parkway and is to be financed with privately-placed CID Bonds as described in Section 4.02 below. A copy of the CID Petition is attached hereto as Exhibit C.

H. On or about November 18, 2013, Developer submitted a petition (the "TDD Petition") to the City requesting the formation of a TDD encompassing the Project Site ("the TDD 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. The TDD District is for the construction of a structured parking facility and is to be financed with a one percent (1%) TDD Sales Tax on a pay-as-you-go basis, all as more particularly described in Section 4.03 below. A copy of the TDD Petition is attached hereto as Exhibit E. The CID District and the TDD District are sometimes collectively referred to herein as the "Districts."

I. On February 17, 2014, the City approved the creation of the CID District through the passage of Ordinance No. CID-3026 (the "CID Ordinance") pursuant to the CID Act. As contemplated in the CID Petition, The CID Ordinance calls for the imposition of special assessments within the real property in the CID District and the issuance of CID Bonds to be used to pay for and/or reimburse certain CID Project Costs (as defined in Section 4.02 below) relating to the CID District. The CID Ordinance is attached hereto as Exhibit F.

J. On February 17, 2014, the City approved the creation of the TDD District through the passage of Ordinance No. TDD-3032 (the "The TDD Ordinance") pursuant to the TDD Act. As contemplated in the TDD Petition, The TDD Ordinance calls for the imposition of a TDD Sales Tax of 1.0% within the TDD District to be collected and disbursed on a pay-as-you-go basis to pay for and/or reimburse certain CID/TDD Project Costs (as defined in Section 4.03 below) relating to the TDD District. The TDD Ordinance specifies that the TDD Sales Tax is to commence on January 1, 2018, 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 TDD District at least six (6) months prior to the original effective date. The TDD Ordinance is attached hereto as Exhibit G.

K. The parties agree that the 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 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 PROJECT**

Section 2.01. Development of the Project Site. The City and Developer hereby agree that the Project consists of the design, development and construction of certain new facilities on the Project Site, including first-class luxury apartment buildings, Class A office buildings and a mixed-use retail and residential facility, including the TDD Improvements, the CID Improvements, Switzer Improvements and other improvements described in this Section 2.01 and as set forth on the Project Budget attached hereto and incorporated by reference herein as **Exhibit H**. Developer hereby contemplates that all buildings, infrastructure improvements, parking facilities (including both structured and surface parking) and other improvements constituting the Project, as set forth in this Section 2.01 and as set forth on **Exhibit H** (collectively, the "Improvements"), shall be developed, constructed, completed, and operated on the Project Site 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, Developer shall have the sole right to, and shall be responsible for, demolition, design, development, construction, equipment and completion of the Improvements, and shall operate and use the Improvements in the manner described herein, all in accordance with the terms of this Agreement and all other Applicable Laws and Requirements. Notwithstanding the prior sentence, the parties agree that the design and construction of the Switzer Improvements shall be governed by the terms of Article III of this Agreement and shall not be the sole right and responsibility of Developer. The parties further agree that, subject to any changes to the Development Plan, the "Project" shall include the following:

(i) Retail Space. Approximately 39,860 square feet of first-class, mixed-use retail shopping, which may include, among other concepts, specialty and boutique shops, restaurants, entertainment and other retail concepts.

(ii) Office Space. Approximately 600,250 square feet of Class A office space located in at least four (4) buildings.

(iii) Multi-Family Residential. Approximately 1,382 first-class, luxury residential units, which shall, at minimum, include the following Improvements: (i) 15 apartment buildings, plus certain units within one (1) mixed-use building, all of the same or better quality than the Mission Farms West development, initially marketed and offered at renting for a blended rate in excess of \$1.20 per square foot.

(iv) Senior Living. Approximately 140 units of high-quality senior living facilities and related amenities.

(v) TDD/Parking Improvements. In addition to the surface parking that Developer shall construct to service the Improvements described in subsections (i) through (iv) above (all of which shall comply with all Applicable Laws and Regulations), Developer shall also include design and construction of structured parking improvements (the "Parking Improvements"), including

without limitation, access control to the Parking Improvements; fire suppression and waterproofing of the Parking Improvements; pedestrian ingress and egress access in and about the Parking Improvements; signage and traffic control for the Parking Improvements. Developer hereby agrees that no less than twenty five percent (25%) of the Parking Improvements will be open and available to the public for parking in connection with and accessible to the retail offerings on the Project Site. Notwithstanding the foregoing, the TDD Improvements shall only consist of the structured parking facility constructed in connection with the mixed-use retail and residential portion of the Project identified as III-MXD on the Development Plan, the costs of which are described on **Exhibit P** attached hereto.

(vi) **CID Improvements**. The CID Improvements shall include the design, development and construction and completion of 113th Street and Indian Creek Parkway and certain infrastructure improvements, including without limitation, sewer, stormwater and water main improvements, irrigation systems, sidewalks, drives and other pedestrian and vehicular thoroughfares within the Districts (collectively, the "**CID Improvements**").

(vii) **Landscaping and Green Space Improvements**. A walkway and trail system, internal parks, green spaces and new trees and other landscaping for the Project Site which shall be reasonably approved by the City (the "**Landscaping Plan**").

The Improvements described in this Section 2.01 shall only be materially amended or modified (i) with 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 and the balance of this Agreement, (ii) with an appropriate reduction in the incentives provided to Developer if the scope of the Project is materially reduced, and (iii) in full compliance with all Applicable Laws and Regulations.

Section 2.02. Phasing of Improvements. Except as otherwise provided for herein, the parties agree that the Improvements 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 I** attached hereto.

Section 2.03. TDD and CID Improvements. Except as otherwise provided for in Article III and the balance of this Agreement, and subject to the terms and conditions of this Agreement, Developer shall be responsible for funding the costs to design, develop and construct the Improvements, including that portion of the Improvements that constitute the CID Improvements and TDD Improvements. The Project, including the CID Improvements and TDD Improvements, and the estimated costs thereof, are set forth in **Exhibits H** attached hereto. Subject to the terms and conditions set forth in Article V below, including the TDD Cap and other limitations set forth in Article V, the costs of the CID Improvements and TDD Improvements shall be reimbursed to Developer.

Section 2.04. Relationship of the City and Developer. The performance of all activities by Developer hereunder shall be as an independent contractor.

Section 2.05. Project Timing – Milestones. Subject to Section 9.07 hereof, Developer hereby agrees to construct the Improvements based upon the schedule set out and contained within **Exhibit I**, the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit I**, then the City 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, then the City may exercise its rights and remedies as set forth in Section 9.04 herein.

Section 2.06. 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 Project Site by Developer; (ii) the management, design, construction, development and completion of the Improvements, including the CID Improvements, by Developer; (iii) the use or occupation of the Project Site and the Improvements; (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 portions of the Project Site that do not include right of way or public lands (except to the extent directly caused by Developer); (v) Developer's actions and undertaking in implementation of the Improvements, including the CID Improvements, or this Agreement; (vi) any breach of representation or warranties by Developer, including without limitation, those set forth in Section 10.10(a) hereof, and (vii) any delay or expense resulting from any litigation filed against Developer by any member or shareholder of 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. Except for and to the extent of the negligence or willful misconduct of the Developer, the parties further agree that this section shall not apply to any suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from the use and operation of (i) the CID Improvements, (ii) the Switzer Improvements, or (iii) the Trails provided for in Section 8.10 hereof, following the completion and opening of such improvements for public use and traffic.

(b) 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 Project Site. 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.

(c) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which Developer may become obligated to one or more of the City Indemnified Parties hereunder, the City Indemnified Party shall give prompt notice to Developer of the occurrence of such event. The failure to notify 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 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 reasonably 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 reasonable 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.

(d) A City Indemnified Party shall submit for approval 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.

(e) 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).

(f) 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 2.07. Insurance.

(a) Not in derogation of the indemnification provisions set forth herein, Developer shall, at its sole cost and expense, throughout the Term, maintain or cause to be maintained insurance with respect to the Project Site and the Improvements, 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 Developer, the Project Site and the Improvements, which amounts shall not be less than those set forth on **Exhibit K** attached hereto. Throughout the Term, Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance listing all coverages applicable to the Project Site and the Improvements. Notwithstanding the foregoing, the parties hereby understand and agree that the requirements set forth in this Section 2.07(a) shall not include or apply to the Switzer Improvements and CID Improvements after the same are the completed and opened for public use and traffic. Thereafter, Developer shall have no obligation to provide insurance for the Switzer Improvements and CID Improvements.

(b) Developer shall require the contractor(s) hired to perform work on any public infrastructure for the Project, including the CID Improvements and the Switzer Improvements 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. 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. 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, 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.

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 2.08. Non-Discrimination. Developer agrees that throughout the Term:

(a) 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, Developer shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

(c) If Developer fails to comply with the manner in which Developer reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, 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;

(d) If 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, 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; and

(e) Developer shall include the provisions of Sections 2.08(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

Developer further agrees that throughout the Term, 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 Project Site and the Improvements, including the Switzer Improvements and TDD Improvements.

ARTICLE III.

DEVELOPMENT AND CONSTRUCTION OF THE SWITZER IMPROVEMENTS

Section 3.01. Development of the Switzer Improvements. The City and Developer hereby agree that the various components of the Switzer Improvements are described herein and as set forth on the project description and preliminary drawings attached hereto and incorporated by reference herein as **Exhibit L**. The parties hereby contemplate that the Switzer Improvements, as set forth on **Exhibit L**, shall be developed, constructed, completed, and operated 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, the City shall be responsible for design, development, construction, equipment and completion of the Switzer Improvements, including the costs therefor. However, because the Switzer Improvements need to be designed, developed and constructed contemporaneously with and in concert with the CID Improvements and the certain other infrastructure improvements to the Project Site, the City hereby appoints Developer as the City's design and construction manager for such Switzer Improvements, and Developer hereby accepts such appointment and agrees to serve as the City's design and construction manager for such Switzer Improvements, subject to the terms and conditions set forth herein.

Section 3.02. Construction Management Services and Duties. Generally, Developer shall act as the City's representative during the design, due diligence, pre-construction and construction of the Switzer Improvements and to coordinate and manage the selection process for design, engineering and construction services, the design and engineering process, the building process, and all other aspects of the design, development and construction of the

Switzer Improvements consistent with the City's schedule, budget and other objectives. In performing such services under this Agreement, the Developer shall be an independent contractor and not an agent of, an employee of, or a joint venture of the City. Developer will assist the City in achieving deliveries of each component of the Switzer Improvements on time and on budget within the scope of services provided for in this Agreement, which scope of services is more particularly set forth on Exhibit M attached hereto. All of Developer's design and construction management services will be performed by Developer in an effective, expeditious and economical manner to further the interest of the City in connection with the design, development and construction of the Switzer Improvements. In addition to the other promises and covenants of the City set forth in this Agreement, the parties hereby agree that the City will pay Developer a construction management fee of \$100.00 in exchange for Developer's design and construction management services hereunder (the "Construction Management Fee"), which Construction Management Fee shall be payable upon invoice from Developer. Other than the Construction Management Fee set forth herein, Developer understands and agrees that it shall receive no other fees, compensation or financial remuneration for serving as the City's design and construction manager in connection with the Switzer Improvements. Without limiting the generality of the foregoing, the parties hereby agree as follows:

(a) Scope of Work. The anticipated scope of work for the Switzer Improvements (the "Switzer Scope of Work") shall be submitted to the City for its review and approval of same. The related infrastructure that will be included in the Switzer Improvements shall be specified on Exhibit L attached hereto, and all other infrastructure improvements shall be excluded from the Switzer Scope of Work.

(b) Engineer of Switzer Improvements. Developer, as the City's design and construction manager, shall be responsible for selecting the engineer (the "Engineer") for the Switzer Improvements, subject to the City's approval of the qualifications of the Engineer.

(c) Design and Engineering Plans. Immediately following the satisfaction of the Switzer Conditions set forth in Section 3.02(i) below, Developer, as the City's design and construction manager, shall cause the Engineer to prepare preliminary design and engineering plans for the Switzer Improvements (the "Engineering Plans"). The design and engineering plans for the Switzer Improvements shall be the property of the City and the City shall be the contracting party with the Engineer, which contract shall specify that Developer shall be acting as the City's design and construction manager in connection with the Switzer Improvements that are the subject of such contract. If the City, in its review of the Engineering Plans, determines that one or more roundabouts are necessary in the Switzer Improvements, the City may require that any such roundabout Engineering Plans be reviewed by an independent consultant experienced in roundabout designs and acceptable to the City, in which case, Developer shall coordinate the same as the City's design and construction manager.

(d) Engineer's Fee. If the Engineer for the Switzer Improvements is the same as the Engineer for the CID Improvements and the other infrastructure improvements on the Project Site, then Developer, as the City's design and construction manager, shall

cause the Engineer's fee for preparation of the Engineering Plans and the Engineer's fee for construction of the Switzer Improvements to be clearly differentiated from other CID Improvements and the other improvements to the Project Site. The Engineer's fee estimate shall include a detailed breakdown of direct labor hours, hourly rates, overhead, and proposed profit for all major project elements of the Switzer Improvements.

(e) Contract Documents. Developer, as the City's design and construction manager, shall cause the City's form contract documents to be used for all aspects of the Switzer Improvements (the "Contract Documents"). Without limiting the generality of the foregoing, the Contract Documents shall provide the following:

(i) The Contract Documents will include adequate insurance obligations for the general contractor of the Switzer Improvements (the "Contractor") and require the Contractor's insurance to include the City as an additional insured and loss payee, as the case may be, under each such policy;

(ii) The Contract Documents shall be entered into between the City and the Contractor and shall specify that Developer shall be acting as the City's design and construction manager in connection with the Switzer Improvements that are the subject of such contract;

(iii) The Contract Documents shall also contain a warranty from the Contractor requiring the Contractor to correct any errors or deficiencies in its designs, drawings, or specifications without additional compensation when due to the Contractor's negligence or other actionable fault;

(iv) The Contract Documents shall contain a provision that prevents changes in the scope of work of the Switzer Improvements that will increase the Contractor's fee or extend the completion of construction of the Switzer Improvements without the prior written approval of the City; and

(v) The Contract Documents shall contain a procedure for Developer's and the City's review and approval of change orders which is mutually acceptable to both parties.

(f) Construction Bidding. Following completion of the Engineering Plans, Developer, as the City's design and construction manager, shall engage in a competitive bidding process inviting only qualified bidders to participate and submit bids to act as the Contractor for the construction of the Switzer Improvements. Said bidding process shall be developed and proposed by Developer and approved by the City. A representative of Developer shall be present at the time the City opens the bids from the responding contractors. The City has the right to approve or reject any and all bids received for the Switzer Improvements. In order to take advantage of economies of scale, the parties hereby agree that the Switzer Improvements may be bid and awarded in connection with the CID Improvements and other infrastructure improvements for the Project Site; provided however that the Contract Documents for the Switzer Improvements shall in all events remain as separate contract(s) from all such other work and improvements. If the

bids for the Switzer Improvements are combined with bids for other the CID Improvements and/or other infrastructure improvements for the Project Site, then the major elements and components of the bids, including but not limited to excavating, grading, filling, final subgrade preparation, curb, paving, sidewalks, storm sewers, and final site stabilization shall include itemized quantities and unit prices for such discreet components. The City shall have the right to review all other bids for the CID Improvements and/or other infrastructure improvements for the Project Site if and to the extent that such bids are combined with bids for the Switzer Improvements.

(g) Permitting. Developer shall require the Contractor to obtain all necessary permits required by all applicable governmental authorities for the construction of the Switzer Improvements; provided, however, that the City's Public Improvement Permit Fee of five percent (5%) for the Switzer Improvements shall be waived by the City. All other customary requirements for issuance of a permit, insurance requirements, performance and maintenance bonds, statutory bonds, requirements to comply with the City's Design and Construction Standards Manual, and similar provisions applicable to privately constructed public improvements shall remain in full force and effect for the Switzer Improvements.

(h) Construction. Notwithstanding Developer's role as the City's design and construction manager for the Switzer Improvements, the City shall at its sole cost also have the right to retain an independent consultant to inspect all elements of the design, development and construction of the Switzer Improvements, and the costs of any such independent consultant shall be added to the Switzer Improvement Costs (as defined in Section 4.04 below). Notwithstanding anything contained herein which is seemingly to the contrary, the Switzer Improvements shall be completed as a single project and not in phases. Developer shall cause the Contractor to commence construction of the Switzer Improvements on a date mutually agreed to by City and Developer, but in no event prior to the full satisfaction of all of the Switzer Conditions (as set forth in Section 3.02(i) below). The Switzer Improvements shall be completed diligently after construction thereof commences and Developer will cooperate, collaborate and coordinate with the City the construction of the Switzer Improvements in connection with the CID Improvements and the other infrastructure improvements to the Project Site. Notwithstanding anything in this Agreement to the contrary, certificates of occupancy for the mixed use buildings described in Section 2.01(i) above and/or the office buildings described in 2.01(ii) above shall not be issued until the Switzer Improvements are substantially completed.

(i) The Switzer Conditions. The parties hereby agree that the City shall not be obligated to commence design/engineering work on the Switzer Improvements unless and until the Developer has commenced design/engineering work for the CID Improvements. The parties hereby agree that the commencement of construction of the Switzer Improvements, and the City's obligation to pay for the same as set forth in Section 4.04 below shall be subject to the satisfaction of each of the following conditions precedent (the "Switzer Conditions"):

- (i) Developer has closed on the purchase of the Project Site; and

(ii) The contemporaneous commencement of construction on the CID Improvements, and Developer shall provide the City with evidence, to City's reasonable satisfaction, of its ability to pay for the same; and

(iii) Developer shall have pulled construction permits for at least one of the multi-family residential buildings described in Section 2.01(iii) above.

(j) Outside Date for Commencement of Construction. In the event that neither the commencement of construction of the Switzer Improvements nor the occurrence of either of the Switzer Conditions takes place within three (3) years of the date of execution of this Agreement, and the CID Bonds have not yet been issued, then either the City or Developer shall have the right to terminate this Agreement and dissolve the Districts with no further liability to the other party, except that the Developer shall pay the costs of any design/engineering work performed on behalf of the City in connection with the Switzer Improvements.

(k) Relationship to Engineer and Contractor; Limitation of Developer's Liability. Nothing in this Agreement shall be construed to mean that the Developer, as the City's design and construction manager for the Switzer Improvements, any of the responsibilities or duties of the Contractor or the Engineer. The Contractor will be responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Switzer Improvements and for the safety of its personnel, property, and its operations and for performing in accordance with the contract between the City and Contractor. The Engineer will be responsible for the design requirements and design criteria of the Project and shall perform in accordance with the agreement between the City and the Engineer. The Developer's services shall be rendered compatibly and in cooperation with the services provided by the Engineer and Contractor. It is not intended that the services of the Engineer and the Developer or the services of the Contractor and the Developer be competitive or duplicative, but rather be complementary. The parties agree that, because of Developer's limited role as the City's design and construction manager for the Switzer Improvements, Developer's liability in connection with the Switzer Improvements shall be limited solely to any errors or omissions of Developer as design and construction manager and accruing on or before the Switzer Improvements are completed and opened for public use and traffic. Developer shall have no other liability associated with the design, construction or completion of the Switzer Improvements.

Section 3.03. Switzer Damages. The parties understand and agree that the City has only agreed to design, construct and complete the Switzer Improvements because of Developer's covenants to design, develop, construct and complete the TDD Improvements and the balance of the Project and that the City would not design, construct and complete the Switzer Improvements without Developer's covenants to deliver the various components of the Project on the schedule set forth in Exhibit I. Accordingly, Developer hereby agrees with the City that if it should fail to timely complete construction of that portion of the Retail Space, the Office Space, the Multi-Family Residential, and/or Senior Living components of the Project as and when set forth below, the City shall be irreparably damaged and therefore shall be entitled, as liquidated damages and not as a penalty, to a payment equal to fifty

percent (50%) of the amount of the Switzer Improvement Costs (the "Switzer Damages"), which Switzer Damages shall be paid to the City on or before December 31, 2024 (the "Switzer Damages Deadline").

(a) However, the parties hereby agree that if Developer has not completed construction of all of the portion of the Retail Space, the Office Space, the Multi-Family Residential, and/or Senior Living components of the Project as and when set forth below by the Switzer Damages Deadline, Developer shall have a one-time right to appear before the City Council on or before January 31, 2025 to show cause, to explain the delays for any unfinished components and to discuss the progress of the Project, after which the City Council may, in its discretion, extend the Switzer Damages Deadline by up to two (2) additional years.

(b) Additionally, the parties hereby agree that the amount of the Switzer Damages shall be reduced as follows:

(i) Upon completion of at least 10,000 square feet of the Retail Space as set forth in Section 2.01(i), the Switzer Damages shall be reduced by twenty five percent (25%) of the Switzer Improvement Costs;

(ii) Upon completion of at least 75,000 square feet of the Office Space as set forth in Section 2.01(ii), the Switzer Damages shall be reduced by twenty five percent (25%) of the Switzer Improvement Costs;

(iii) Upon completion of at least 500 units of the Multi-Family Residential as set forth in Section 2.01(iii), the Switzer Damages shall be reduced by twenty five percent (25%) of the Switzer Improvement Costs; and

(iv) Upon completion of at least 100 units of the Senior Living as set forth in Section 2.01(iv), the Switzer Damages shall be reduced by twenty five percent (25%) of the Switzer Improvement Costs; provided however, that the twenty five percent (25%) reduction of Switzer Improvement Costs set forth in this subparagraph (d) may also be achieved (without the completion of 100 units of Senior Living) by increasing the delivery of completed components set forth in subparagraph (i) through (iii) above as follows: (x) the completion of 14,000 square feet of additional Retail Space, (y) the completion of 25,000 square feet of additional Office Space, and (z) completion of 100 units of additional Multi-Family Residential.

(c) The City also hereby agrees that if Developer shall complete at least 200,000 square feet of Office Space as set forth in Section 2.01(iii) on or before the Switzer Damages Deadline, then the Switzer Damages shall be waived and of no further force and effect, regardless of whether or not the Developer completes the other components set forth in subparagraphs (i), (iii) and (iv) above.

(d) Further, Developer hereby agrees that for purposes of this Section 3.03, Developer will maintain certain minimum levels of equity in the Project at all times prior to satisfaction of the requirements set forth in this Section 3.03 and waiver or full

payment of the Switzer Damages. Specifically, Developer hereby agrees that its equity interests in that portion of the Project Site which is owned by Developer (and not including Developer's Affiliates) shall at all times be no less than two hundred percent (200%) of the maximum amount of Switzer Damages that could be owed by Developer hereunder, after taking into account any reductions to the Switzer Damages amount as set forth in subsections (b)(i) through (iv), and subsection (c) above. Developer shall prove its equity interests in the Project to the City on or before June 15, 2014, and June 15, 2019 and on each June 15th thereafter until Developer has satisfied the requirements set forth in this Section 3.03 and the Switzer Damages have been waived or paid in full by providing the City with an independent, third party appraisal of the portions of the Project Site owned by Developer at that time, a title commitment showing any encumbrances against the Project Site, and evidence of the total indebtedness against the Project Site from Developer's lender(s) and such other information as the City deems reasonable and necessary to determine Developer's equity. Additionally, Developer shall cause BK Properties, LLC ("Guarantor") to provide a guaranty in the form attached hereto as **Exhibit J** (the "Switzer Damages Guaranty"), which Switzer Damages Guaranty shall become effective in the event that Developer's equity in the Project Site shall at the time of any June 15th verification date, be less than the two hundred percent (200%) of Developer's potential Switzer Damages, and such Switzer Damages Guaranty shall be limited to fifty percent (50%) of the difference between (i) the amount of Developer's equity in the Project Site, and (ii) an amount equal to 200% of Developer's potential Switzer Damages. For purposes of illustrative example only, if the actual costs of the Switzer Improvement Costs were exactly \$8,000,000 and Developer has completed at least 500 units of the Multi-Family Residential, but none of the other Improvements, then the potential Switzer Damages would be reduced to \$3,000,000 (50% of the \$8M Switzer Improvement Costs, minus a 25% reduction pursuant to subsection (b)(iii) above). Thus, the Developer's required equity in the Project Site would in this example be \$6,000,000 (200% of the maximum amount of the Switzer Damages). If, however, Developer's appraisal and evidence from lender demonstrate that Developer has \$5,000,000 of equity in the Project Site at a particular time, then the Switzer Damages Guaranty would be for an amount equal to \$500,000 (50% of the \$1M difference between Developer's \$5M of equity and the \$6M that would be required to be 200% of the potential Switzer Damages of \$3M).

Section 3.04. Disclaimer. Any review of the items set forth in this Article III performed by the City or its representatives is not intended to and shall not be construed as an undertaking of the City to provide adequate and accurate Engineering Plans for the Switzer Improvements. Any review of the items set forth in this Article III performed by the City or its representatives is not done for the benefit of Developer, Engineer, Contractor or their respective consultants, any other political subdivision, or the traveling public. The City makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Engineering Plans, or any other work performed by Developer, the Engineer, Contractor or their respective consultants.

Section 3.05. Right-of-Way Dedication and Vacation. The parties hereby agree as follows:

(a) The parties understand and acknowledge that the City owns Switzer Road right-of-way which bi-sects the Project Site (the “Current Switzer ROW”). The Switzer Improvements are planned in a different location within the Project Site which is generally described in **Exhibit L** and will require Developer to dedicate new right of way (the “Switzer Improvements ROW”) to accommodate the Switzer Improvements. That parties agree that subject to the terms of this Section 3.05, they will exchange, at no costs to either party, the Current Switzer ROW for Switzer Improvement ROW.

(b) Prior to or contemporaneous with the satisfaction of the Switzer Conditions described in Section 3.02(i) and conditioned on vacation of the Current Switzer ROW as set forth in Section 3.05(c) below, the Developer shall dedicate at no charge to the City the Switzer Improvements ROW. Such dedication shall be done by plat, deed or other appropriate mechanism subject to the reasonable approval of the parties. Developer shall only be responsible for dedicating to the City property owned by the Developer. The City shall be responsible for the cost of acquiring any land, easements, or any right-of-way not owned by Developer necessary for construction of the Switzer Improvements.

(c) Simultaneously with the dedication of Switzer Improvements ROW, the City shall, subject to the provisions of Section 3.05(d) below, vacate the Current Switzer ROW and shall transfer the land encompassing the Current Switzer ROW to the Developer at no charge to the Developer. Such vacation shall be initiated by the Developer and acted on by the City in due course either via (i) a vacation petition, (ii) a vacation by plat, or (iii) any other available method which results in title being transferred to the Developer.

(d) The parties hereby understand and acknowledge that the Kansas Department of Transportation (“KDOT”) has ownership and/or consent rights in the Current Switzer ROW. The parties further acknowledge that the City’s rights in the Current Switzer ROW may be subject to certain reverter requirements. If and to the extent that the City has unencumbered rights in the Current Switzer ROW, the City shall vacate such right-of-way at no charge to the Developer. If the City's rights in the Current Switzer ROW are encumbered by rights of reverter or otherwise, the City will convey to the rights that it does have in the Current Switzer ROW, if any, subject to the rights of reverter or other encumbrances and shall reasonably cooperate with the Developer (at no additional cost to the City) to try to clear title to the same. Further, the City shall cooperate with and support any permit, easement, vacation or similar requests made by Developer to KDOT which are reasonably necessary to allow the Developer to develop and construct the Project Improvements (including storm water or stream corridor improvements).

(e) The City Council approval of the actions called for in subsections (b) and (c), shall both be considered by the City Council at the same hearing and each is a condition precedent to the other.

(f) The parties hereby agree to take such other commercially reasonable actions to effectuate the intent of this Section 3.05.

ARTICLE IV. FINANCING

Section 4.01. Source of Funds. The costs of the CID Improvements and the TDD Improvements (the "CID/TDD Project Costs") will generally be funded in whole or in part by private equity and debt ("Private Funds") and public incentives, including the CID Bonds (as defined in Section 4.02 of this Agreement) and the Pay-As-You-Go TDD Financing (as defined in Section 4.03 of this Agreement) (collectively, the "Public Financing"). The costs of the Switzer Improvements (the "Switzer Improvement Costs") shall be funded by the City as set forth in Section 4.04 below. Subject to the terms and conditions of this Agreement, the portion of the CID Project Costs relating to the CID District shall be reimbursed in whole or in part with CID Bonds and the portion of the TDD Project Costs relating to the TDD District shall be reimbursed in part with Pay-As-You-Go TDD Financing. Reference is hereby made to the CID/TDD Project Costs which are more particularly set forth on **Exhibits O and P** attached hereto. Developer, using Private Funds, will initially advance all of the costs for the design, development and construction of the CID Improvements relating to the CID District and the TDD Improvements relating to the TDD District.

Section 4.02. The CID District. It is contemplated by the parties that the CID Improvements shall be funded by bonds or other obligations issued pursuant to the CID Act ("CID Bonds"). Developer has identified certain CID/TDD Project Costs related to the construction of the CID Improvements which may be paid with CID Bonds if and to the extent such CID/TDD Project Costs are: (i) agreed-upon by the parties and identified on **Exhibit O** attached hereto for the CID District (the "CID Project Costs"), and (ii) eligible for payment or reimbursement pursuant to the CID Act and, if applicable, federal tax law. Further, in connection with the CID Improvements, the parties hereby agree as follows:

(a) **Amount of CID Bonds.** It is contemplated that for the CID District, the CID Bonds will be privately placed and sold to Qualified Institutional Buyers (as defined), which Qualified Institutional Buyers will purchase the CID Bonds described herein in a par amount of approximately \$6,031,428.00 which shall render an estimated \$5,078,242 of net CID Bond Proceeds for use in funding the CID Project Costs which shall be deposited in the CID Construction Account. For purposes hereof, the term "Qualified Institutional Buyers" shall be deemed to mean" means institutional investors including, without limitation, insurance companies, funds and state or federally chartered financial institutions, or other entities which are fully qualified to buy private placements under Securities Exchange Commission Rule 144A.

(b) **Levy of CID Special Assessments; CID Debt Service Account.** Subject to the terms and conditions of this Agreement and the CID Ordinance, the City shall cause the levy of a CID special assessment in accordance with the CID Petition for each of the various parcels or projects within the CID District. Each of the CID Assessments shall be levied by the City on a per square foot of land area basis, exclusive of right of way, as soon as reasonably practical following completion of the CID

Improvements, and each of the CID Assessments shall run for a period of twenty (20) years. Following the issuance of the CID Bonds by the City for the CID District, the CID Assessments from the CID District shall be deposited into an account , which fund shall be created and administered by the City or its designee and which fund will be described and defined in the Bond Documents for the CID District and which shall, for purposes of this Agreement, be referred to as the "CID Debt Service Fund". The CID Assessments in the CID Debt Service Account will be utilized to first pay principal and interest payments required under CID Bonds for the CID District at such times as such payments may be required under the Bond Documents for the CID District. The specifics of the issuance and repayment of the CID Bonds for the CID District shall be in accordance with the Bond Documents, to be approved by ordinance of the City, in accordance with this Agreement. The City intends to authorize the levy of the maximum CID Assessments in the CID Ordinance, and, following adoption of the CID Ordinance, directs the City's staff to take all actions necessary to administer such CID Assessments commencing as set forth above.

(c) CID Construction Account. When CID Bonds are issued by the City for the CID District, the proceeds of the CID Bonds for the CID District shall be deposited into a fund which shall be created and administered by the City or its designee and which will be described and defined in the Bond Documents for the CID District and which, for purposes of this Agreement shall be referred to as the "CID Construction Account". The Net Proceeds from the sale of the CID Bonds shall be deposited into the CID Construction Account shall be used to pay or reimburse the CID Project Costs which are eligible expenses under the CID Act and located within or without the CID District, subject to the limitations in the CID Act, and, if applicable, federal tax law. Developer hereby understands and agrees that CID Bond Proceeds from the CID Bonds may not be spent for any costs other than CID Project Costs. Disbursements from the CID Construction Account shall be as provided in the Bond Documents.

(d) CID Collection Period. The CID Assessments shall begin with the first payment of general property taxes following the adoption by the City of an ordinance levying the CID Assessments (unless such ordinance is adopted and certified too late to permit its collection at such time) and shall be levied and collected within the CID District for twenty (20) years in twenty (20) equal annual installments in accordance with K.S.A. 12-6a10, regardless of whether Developer has been fully reimbursed for all Eligible Expenses (the "CID Collection Period"). Notwithstanding anything set forth in Section 4.02(b) or the balance of this Agreement which is seemingly to the contrary, at the end of the CID Collection Period, the parties understand and agree that the CID shall thereafter terminate, and no additional CID Assessments shall be levied within the CID District.

(e) Payment of the CID District Administrative Fee. When CID Bonds for the CID District are issued, Developer hereby understands and agrees that the CID Administrative Fee for the CID District described in Section 10.01 below shall be paid from the proceeds of the CID Bonds.

Section 4.03. The TDD District. It is contemplated by the parties that the Parking Improvements which are included in the TDD Improvements shall be funded in part by TDD Sales Tax Proceeds. Developer has identified certain TDD Project Costs which may be paid with TDD Sales Tax Proceeds if and to the extent that such TDD Project Costs are: (i) agreed-upon by the parties and identified on **Exhibit P** attached hereto for the TDD District (the "TDD Project Costs"), and (ii) eligible for payment or reimbursement pursuant to the TDD Act. Subject to the terms and conditions of this Agreement, including without limitation, (x) the TDD Cap set forth in Section 4.03 below, and (y) the Administrative Fee set forth in Section 10.01 below, Developer shall be reimbursed for Eligible Expenses from and to the extent of the TDD Sales Tax proceeds collected during the Term. Further, in connection with the TDD Parking Project, the parties hereby agree as follows:

(a) **TDD Sales Tax.** The City hereby agrees that, subject to the TDD Cap and the other terms and conditions set forth in this Agreement, the Eligible Expenses incurred by Developer for TDD Project Costs shall be financed and reimbursed with Pay-As-You-Go TDD Financing (as defined in Section 4.03(c) below), 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 TDD District (the "TDD Sales Tax"). 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 I of this Agreement. At the time the list of tenants is provided to the DOR, Developer shall also provide a copy to the City.

(b) **TDD Sales Tax Fund.** During the Term, all TDD Sales Tax proceeds generated within the TDD 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.

(c) **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 reimburse Developer for Eligible Expenses for the TDD District, 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 (v) Developer is not in default under the terms and conditions of this Agreement. Developer hereby understands and agrees that TDD Sales Tax Proceeds may not be spent for any costs other than TDD Project Costs. The parties further agree as follows:

(i) The TDD Sales Tax available to Developer for reimbursement of Eligible Expenses for the TDD District shall in no event exceed Seven Million One Hundred Sixty Thousand and 00/100 Dollars (\$7,160,000.00) (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 for the TDD District 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 for the TDD District through Pay-As-You-Go TDD Financing, the parties understand and agree that the TDD for the TDD District shall thereafter terminate on the earliest practical date thereafter, and the TDD Sales Tax shall terminate and no longer be levied or collected within the TDD District.

(ii) 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 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 for the TDD District shall thereafter terminate, and the TDD Sales Tax shall terminate and no longer be levied or collected within the TDD District.

(iii) 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 discretion.

(d) Condition Precedent to Payment or Reimbursement from TDD Sales Tax. In addition to the conditions set forth in Section 4.05 below, Developer hereby understands and agrees that it shall not receive any reimbursements from the Pay-As-You-Go TDD Financing from the TDD District unless and until Developer has completed the mixed-use retail and residential portion of the Project identified as III-MXD on the Development Plan, but excluding any free standing pad site buildings and/or internal tenant improvements/finish work for particular retail spaces therein.

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

Section 4.04. Switzer Improvement Costs. It is contemplated by the parties that the Switzer Improvements shall be funded by the City with the proceeds of bonds, temporary notes, obligations or other funds of the City (the "City Funds"). The City and Developer have agreed upon certain categories of Switzer Improvement Costs which shall be paid with City Funds and such costs categories and estimates are identified on **Exhibit Q** attached hereto (the "Switzer Improvement Costs"). Upon full satisfaction of the conditions set forth in Section 3.02(i) above and prior to commencement of construction on the Switzer Improvements, the City Funds shall be deposited into a fund which shall be created and administered by the City

or its designee for payment of the Switzer Improvement Costs from time to time, and which, for purposes of this Agreement shall be referred to as the "Switzer Improvements Fund". The City Funds in the Switzer Improvements Fund will be utilized to pay the Contractor and other Switzer Improvement Costs according to the terms and conditions of the Contract Documents as set forth in Article III. The City, and not the Developer, shall have financial responsibility for the costs and expenses associated with the Switzer Improvements, including any cost-overruns related to the Switzer Improvements. However, the parties hereby agree that the City will not be required to make disbursements from the Switzer Improvements Fund more often than once every month.

Section 4.05. Conditions Precedent to Payment or Reimbursement. Developer hereby understands and agrees that it shall not receive any reimbursements for CID/TDD Project Costs 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 costs and expenses for which Developer seeks reimbursement must in all events be Eligible Expenses;
- (b) In accordance with Section 5.02 hereof, the City has approved Certificates of Expenditure for all such CID/TDD Project Costs; and
- (c) Developer shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder.

Section 4.06. Economic Development Revenue Bonds. Subject to all Applicable Laws and Requirements, and subject further to compliance by Developer with all City requirements for the issuance of economic development revenue bonds ("EDRBs"), the parties hereby agree that Developer may use EDRB financing to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for the Project. However, the parties hereby understand and agree that, for purposes of the EDRB financing agreed to and provided for in this Section 4.06, the EDRBs shall not be used for abatement of ad valorem taxes for the Project or the Project Site, except for and excluding public improvements thereon. Further, Developer hereby understands and agrees that: the EDRBs for each respective phase of the Project shall be redeemed and paid in full within twelve (12) months from the date of completion of the Improvements for such respective phase.

ARTICLE V. REIMBURSEMENT

Section 5.01. Reimbursement. Subject to Article IV of this Agreement, CID Assessments shall be used to reimburse Developer for CID Project Costs, TDD Sales Tax shall be used to reimburse Developer for TDD Project Costs, and City Funds shall be used to pay for the Switzer Improvement Costs, all as estimated in Exhibits O, P and Q, respectively, and in all events in accordance with the terms of this Agreement. In no event will the

reimbursement described hereunder with respect to any CID Project Costs or TDD Project Costs exceed any applicable limitations set forth in this Agreement.

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

(a) Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as **Exhibit S** setting forth the amount for which reimbursement is sought, identification of the relevant CID/TDD Project Costs and the appropriate source of Public Financing Proceeds for payment of such CID/TDD Project Costs. Developer shall certify to the City that it shall only use the Public Financing Proceeds for the designated CID/TDD Project Costs described in the Certificate of Expenditure and that such proceeds shall not be commingled with other sources or uses. For instance, Developer shall certify and be responsible for ensuring that CID Bond Proceeds from the CID District are not in any way commingled or improperly used for TDD Project Costs incurred in the TDD District.

(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). The cost breakdown shall include the quantity, unit price and price extension for each eligible item requested for reimbursement.

(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 Developer's and other's records relating to all CID/TDD Project Costs 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. 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 thirty (30) calendar days after receipt of any Certificate of Expenditure to review and respond by written notice to Developer. If the submitted documentation demonstrates that: (1) the Certificate of Expenditure directly relates to the CID/TDD Project Costs and is an Eligible Expenses; (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 Developer, then the City shall approve the Certificate of Expenditure and reimburse Developer for financing the cost of the Improvements pursuant to the terms of this Agreement. If the City disapproves of the Certificate of Expenditure, the City shall notify Developer in writing of the reason(s) for such disapproval within such thirty (30) day period.

Section 5.03. Issuance of CID Bonds. It is anticipated that the CID Bonds for CID Project Costs, may be issued and that the City, in its sole discretion, may authorize the

issuance of CID Bonds as provided for under the CID Act and the City's Economic Development Policy.

(a) Terms and Interest Rate. Any such CID Bonds shall be issued in an amount, on terms and at an interest rate or rates determined by market conditions at the time of issuance and under terms and conditions deemed acceptable by the City in its sole discretion.

(b) Underwriters. The underwriter(s), if any, for any CID Bonds shall be selected by the City. The City shall solicit input from Developer as it relates to all components of the issuance of CID Bonds in an effort to maximize the size of the issuance, but the City shall have sole right, power and authority to determine the amount, terms, interest rate or rates and other terms and conditions of the CID Bonds.

(c) No City Guaranty or Credit Enhancement. The City shall not in any way guaranty or lend its credit to secure or support the CID Bonds.

(d) Statutory Bond Requirements. Developer and the City agree that they will comply with all reasonable requirements, including any statutory requirements, associated with the issuance, sale, purchase and delivery of any CID Bonds.

(e) Discretion of the City Council. Further, Developer understands and agrees that the City cannot bind governing bodies of the City regarding the authorization, issuance, sale or delivery of CID Bonds and that nothing contained herein shall in any way bind the City Council of the City to accept or reject any proposal to authorize, issue, sell or deliver CID Bonds, which decision shall unconditionally remain within the sole discretion of such City Council.

(f) Privately Placed CID Bonds. The parties agree that, subject to the approval of the City, the CID Bonds may be privately placed and sold only to institutional investors including, without limitation, insurance companies, funds and state or federally chartered financial institutions, or other entities which are fully qualified to buy private placements under Securities Exchange Commission Rule 144A ("Qualified Institutional Buyers"). The City shall require any such Qualified Institutional Buyers to provide an "investor letter" which is acceptable to the City in its sole discretion. Notwithstanding anything herein to the contrary, the Developer reserves the right to purchase the bonds for its own account or via an Affiliate.

(g) Cooperation in Issuance of CID Bonds. Developer hereby agrees to cooperate and provide all necessary information to assist the City and its bond counsel and underwriters in disclosures and preparation of the Bond Documents reasonably necessary to issue the CID Bonds. Developer hereby agrees to provide continuing disclosures as it relates to the Project in connection with the CID Bonds, as determined at the time of issuance of the CID Bonds, and as the same may thereafter be modified, so long as any such CID Bonds are outstanding, and will obligate all successors, assigns and transferees to provide any necessary disclosures. And notwithstanding anything herein to the contrary, the parties hereby agree that this

Agreement shall be amended by the City and Developer if necessary to conform the provisions hereof to the terms and conditions of any CID Bonds and the Bond Documents.

ARTICLE VI.
ASSIGNMENT AND TRANSFER OF AGENT'S RIGHTS

Section 6.01. Assignments by Developer. The rights, duties and obligations hereunder of 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. 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 Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to only a portion of the Project, then such obligations, conditions and restrictions to the extent that they relate to such portion). Developer (and any guarantor of Developer) shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release Developer (and/or any guarantor of Developer). 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.

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 Project shall be bound by any obligation of Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within the Project (other than Developer) shall be entitled to any rights whatsoever or claim upon the reimbursements from the TDD Sales Tax or CID Bond Proceeds, except as specifically authorized in writing by Developer and the City.

Section 6.03. Excluded Encumbrances and Transfers. The foregoing restrictions in this Article VI shall not apply to (a) any security interest granted to secure indebtedness to any construction or permanent lender, (b) the rental and leasing of portions of the Project in the ordinary course of Developer's business for the uses permitted under the terms of this Agreement; (c) any transfer of 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"). Developer hereby agrees to provide the City with written notice of any assignment or transfer permitted by this Section 6.03 within fifteen (15) days after such assignment or transfer.

Section 6.04. Transfer of Portions of the Project Prior to Completion. Notwithstanding anything set forth herein to the contrary, if, prior to Substantial Completion of a particular building or portion of the Project, Developer desires to sell, convey or otherwise transfer such portion to third party, the City shall have the right to approve any such transfer,

provided that such approval shall not be unreasonably withheld if and to the extent that such proposed transferee shall have qualifications and financial responsibility, as commercially reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Project being transferred. Any proposed transferee shall, by instrument in writing executed by the City and transferee, for itself and its successors and assigns, and expressly for the benefit of the City, assume the obligations of Developer under this Agreement with respect to such portion of the Project and agree to be subject to the conditions and restrictions to which the Developer is subject to the extent that they relate to such portion of the Project. The form of this assumption and acknowledgment instrument is hereby attached hereto as **Exhibit N** (the "Assumption and Acknowledgement"). Notwithstanding Developer's rights to transfer portions of the Project set forth in this Section 6.04, Developer hereby understands and agrees that (a) all of the obligations set forth in this Agreement which are not expressly assumed by any such transferee pursuant to the Assumption and Acknowledgment shall remain the obligations of Developer and shall be in full force and effect, and (b) in no event shall any rights or access to reimbursement of CID Bond Proceeds, TDD Sales Tax, EDRBs or other public financing provided for in this Agreement be available to any transferee without the express written consent of the City, which consent may be granted or withheld in the City's sole and absolute discretion.

Section 6.05. Completion of Project or Portions of the Project. Notwithstanding anything set forth herein to the contrary, following the Substantial Completion of the Project, or any particular building or Improvement which comprises a portion of the Project, Developer may thereafter freely sell, assign or transfer such applicable portion thereof, to another entity without the consent or approval of the City. However, Developer hereby agrees to provide the City with (a) written notice of any assignment or transfer permitted by this Section 6.05 within fifteen (15) days after such assignment or transfer, and (b) a fully executed Assumption and Acknowledgment in the attached hereto as **Exhibit N**. Notwithstanding Developer's rights to transfer portions of the Project set forth in this Section 6.04, Developer hereby understands and agrees that (a) all of the obligations set forth in this Agreement which are not expressly assumed by any such transferee pursuant to the Assumption and Acknowledgment shall remain the obligations of Developer and shall be in full force and effect, and (b) in no event shall any rights or access to CID Bond Proceeds, TDD Sales Tax, EDRBs or other public financing provided for in this Agreement be available to any transferee without the express written consent of the City, which consent may be granted or withheld in the City's sole and absolute discretion.

ARTICLE VII. CONSTRUCTION OF IMPROVEMENTS

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

Section 7.02. Commencement of Construction. Developer hereby agrees that Developer shall commence construction of the Improvements and each respective Phase of the

Project as set forth in the Performance Milestones attached hereto as **Exhibit I**, or at such other time as may be agreed upon by Developer and the City in writing.

Section 7.03. Completion Dates. Developer hereby agrees that Developer shall Substantially Complete construction of the Improvements and each respective Phase of the Project on or before the completion date for such Phase as set forth in the Performance Milestones attached hereto as **Exhibit I**.

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 Project, other than the Improvements (each, a "**Permitted Modification**") if, and to the extent, that:

(a) Modifications are approved via the Planning Commission and/or the City's governing body via the planning and zoning process or as required by Applicable Laws and Requirements; or

(b) Modifications shall be allowed to the interior portions of the various buildings that constitute the Improvements.

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 (other than as set forth in Section 7.04(a) above).

Section 7.05. Periodic Meetings with the City. From the Effective Date until Substantial Completion of the CID Improvements and the Switzer Improvements, 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 monthly, to review and discuss the design, development and construction of the CID Improvements and the Switzer Improvements. 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 Project, including the CID Improvements and the Switzer Improvements, which shall include, without limitation, information identifying leasing or sale activities for the 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 later of the CID Collection Period and 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 dignified quality 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 Project.

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

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

(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; provided this shall not be interpreted to prohibit restaurants or drinking establishments permitted within the Districts. No oil, gasoline or flammable liquid shall be stored within the Districts, except as approved by the City as part of a convenience store and/or gas station operation.

(ii) A gas station or 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.

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

(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 Districts 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.

(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 Districts 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 precious metals facilities except jewelry stores.

The City's governing body may grant variances to the restrictions set forth in this Section 8.02(c) 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(c) and record the same against the real property within the Districts, 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 Project and all other of its property used or useful in the conduct of its business and operations within the Project Site, 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 Districts all subject to normal wear and tear. 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 perform its obligations under this Agreement. 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. Developer's maintenance obligations hereunder do not extend to public right of way and public lands within the Project Site and the Districts.

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 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, including the Project Site. In the event that 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 Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit 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. Developer and any other owners of real property within the Project Site shall promptly notify the City in writing of a protest of real estate taxes or valuation of Developer's or such other owners' property within the Project Site.

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the Project or the property within the Project Site, or the funds in connection with any of the 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, Developer shall not be in default if mechanics' or other liens are filed or established and 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 Project, Developer, or its agents and contractors, 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, Destruction or Condemnation.

(a) In the event of damage to or destruction of any portion of the Project resulting from fire or other casualty during the Term, or in the event any portion of the District is condemned or taken for any public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, the net proceeds of such condemnation or taking or the net proceeds of any realization on title insurance shall be paid into, and used in accordance

with a construction escrow agreement reasonably satisfactory to the City and Developer ("Casualty Escrow").

(b) If, at any time during the Term, the Project or any part thereof (other than the public roads, public right of way and public lands within the Project) 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.

(c) If at any time during the Term, title to the whole or substantially all of the Project which has previously been conveyed to Developer shall be taken in condemnation proceedings or by right of eminent domain, Developer, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 8.07(c), "substantially all of the District" shall be deemed to have been taken if the City and Developer, each acting reasonably and in good faith, determine that the untaken portion of the District, including the parking improvements, cannot be practically and economically used by Developer for the purposes and at the times contemplated by this Agreement.

(d) In the event of condemnation of less than the whole or substantially all of the District which has previously been conveyed to Developer during the Term, Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Project, as nearly as possible, to its former condition, and shall be entitled to draw upon the Casualty Escrow for payment of said costs.

(e) Nothing in this section will require the Developer to expend funds in excess of the Casualty Escrow.

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 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 Project. Except as otherwise provided in this Agreement, the City shall pay all costs it incurs under this provision. Nothing contained in this Section 8.08 shall restrict or impede the right of the City to enter the Project Site pursuant to any Applicable Laws and Requirements.

Section 8.09. Civic and Community Participation. During the Term of this Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Overland Park. Accordingly, at a minimum, Developer shall (a) at all times be a dues-paying member in good standing with (i) the Overland Park Chamber of Commerce, and (ii) the Overland Park Economic Development Council, and (b) Developer shall

make an annual donation to the Overland Park Arts and Recreation Foundation in an amount determined in the sole discretion of Developer, but not to be less than \$1,000 annually.

Section 8.10. Trails. The parties hereby agree that the City shall construct and operate a trail system as generally set forth on **Exhibit R** attached hereto (the "Trails"), and as more particularly described in Planning and Zoning Stipulations _____. The Trails shall be constructed and operated at the City's sole cost and expense, but Developer hereby agrees to provide, or cause the owner of the property upon which the Trail is to be constructed to provide, the City with reasonable and appropriate access and construction easements to allow the City with the ongoing, perpetual rights to construct and operate the Trails on such property, such easement rights to be provided at no cost to the City. All such easements shall be mutually acceptable to the City and the Developer, each acting reasonably and in good faith.

Section 8.11. 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 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.

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

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

(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; or

(c) Without limiting the generality of the foregoing, if Developer shall assign or transfer the Project, Project Site and/or this Agreement (or any portion thereof) in violation of the terms and conditions set forth in Article VI; 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 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 Developer, and/or (ii) terminate the TDD District 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.

(b) Demand payment of the Switzer Damages, if applicable, pursuant to the terms of Section 3.03 of this Agreement.

(c) 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 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.

(d) 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.

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.

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 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 Developer, service of process on Developer or Agent shall be made by personal service upon an officer or agent of 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; terrorism; 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; failure of power or other utility services which is beyond the reasonable control of Developer; any lawsuit seeking to restrain, enjoin, challenge or delay construction, 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 Project as set forth on **Exhibit I** hereto, such extension shall only be granted with the approval of the City, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse Developer 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. GENERAL PROVISIONS

Section 10.01. Expenses and Administrative Fee. Developer shall be responsible for, and pay, within thirty (30) days of the invoice, the reasonable legal fees of the City incurred in connection with the creation and implementation of the Districts 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. In addition to the amounts described above, the Developer hereby agrees to pay the City an administrative fee (collectively, the "Administrative Fee") as follows:

(i) Upon the issuance of the CID Bonds for the CID District, the City shall be paid from Net Proceeds of CID Bonds an amount equal to one percent (1%) of the par amount of such CID Bonds on the date that such obligations are issued; and

(ii) The TDD Sales Tax shall be used from time to time to pay the Administrative Fee for the TDD District. The annual Administrative Fee for the TDD District shall be an amount equal to the greater of \$5,000 per year or 1% of the TDD Sales Tax proceeds deposited into the TDD Sales Tax Fund hereunder from time to time during the Term and such Administrative Fee shall be due and payable on the date the TDD Sales Tax is received by the City from DOR (provided that the TDD Act permits payment directly from the TDD Sales Tax, and if not, within thirty (30) days of demand therefor by the City).

Section 10.02. 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 10.03. 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 10.04. 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 CID Bonds or City Funds 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 Developer, or any successor in interest, for any default or breach by the City.

Section 10.05. Right to Inspect. 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 Developer's books and records relating to the Project as pertinent to the purposes of this Agreement.

Section 10.06. 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 10.07. 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 10.08. Kansas Law. This Agreement shall be construed in accordance with the laws of the State of Kansas.

Section 10.09. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To Developer:

College 69 Associates, LLC
c/o Block Real Estate Services, LLC
700 West 47th Street, Suite 200
Kansas City, Missouri 64112
Attn: Ken Block
Email: KBlock@Blockllc.com

With copies to:

F. Chase Simmons, Esq.

Polsinelli, PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

Irwin Blond, Esq.
Polsinelli, PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

(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

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 10.10. 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 10.11. 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 10.12. 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 Developer at Developer's cost after execution, and proof of recording shall be provided to the City.

Section 10.13. 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 10.14. 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 10.15. Tax Implications. Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) Developer is relying solely upon its own tax advisors in this regard.

Section 10.16. Required Disclosures. Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by Developer 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 10.17. 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 10.18. 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 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 _____, 2014, 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:

**COLLEGE 69 ASSOCIATES, LLC,
a Kansas limited liability company**

By BK Properties, LLC, its Manager

By: _____
Kenneth G. Block, Trustee of the Kenneth G.
Block Trust dated January 11, 1991, as
amended, Sole Member and Manager

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2014, before me personally appeared _____, to me personally known, who being by me duly sworn did say that he/she is the Manager of BK Properties, LLC, as Manager of College 69 Associates, 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:

"Action" means any suit, action, investigation, claim or proceeding in which Developer may become obligated to one or more of the City Indemnified Parties as set forth in Section 2.06(c) hereof.

"Administrative Fee" means the fee paid by Developer to City set forth in Section 10.01(i) and 10.01(ii) of this Agreement for City's the issuance of the CID Bonds for the CID District and collection of the TDD Sales Tax for the TDD District.

"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 City Place 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 TDD Act, the SBD Act, the Kansas Cash Basis Law (K.S.A. § 10-1100, et. seq.) and Budget Law (K.S.A. § 75-2935 et. seq.).

"Assumption and Acknowledgment" means that certain instrument to be executed by the City and a transferee of a portion of the Project, pursuant to which such transferee shall assume the obligations of Developer under this Agreement with respect to such portion of the Project and agree to be subject to the conditions and restrictions to which the Developer is subject to the extent that they relate to such portion of the Project as more particularly set forth in Sections 6.04 and 6.05 and **Exhibit N** attached hereto.

"Bond Documents" means the bond trust indentures, bond purchase agreements, tax compliance agreements, financing agreements, preliminary and final offering statements, continuing disclosure agreements, and other similar documents executed and delivered by the parties in connection with the CID Bonds.

"Casualty Escrow" means that certain escrow agreement for the net proceeds of any insurance relating to damage or destruction of the Project or the net proceeds of any realization on title insurance for the 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 2.06(b) hereof.

"CID" means a community improvement district created pursuant to the CID Act, as described in Recital F hereof.

"CID Act" means K.S.A. 12-626 et seq., as amended from time to time.

"CID Assessments" means those CID special assessments of approximately \$0.15 per square foot of land areas for each of the various parcels or projects within the CID District as described in Section 4.02 of this Agreement.

"CID Bond Proceeds" means the proceeds from the CID Bonds referred to in Section 4.02(c) of this Agreement.

"CID Bonds" means any CID Bonds issued and sold pursuant to Section 4.02 of this Agreement.

"CID Collection Period" means the period that commences on the date that the CID Assessments are 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 CID Bonds or (b) regardless of whether Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty (20) years from the date that the CID Assessments are first imposed, as set forth in Section 4.02(d) hereof.

"CID Construction Account" means that certain fund which shall be created and administered by the City or its designee and which will be for the deposit of the CID Bonds for the CID District and described and defined in the Bond Documents for the CID District and as otherwise set forth in Section 4.02(c) of the Agreement.

"CID Debt Service Fund" means the account created and administered by the City for the deposit of CID Assessments from the CID District.

"CID District" means the transportation development district encompassing the Project as set forth on **Exhibit B-1** and **Exhibit B-2**.

"CID Improvements" means the improvements to the roads within the CID District, including 113th Street and Indian Creek Parkway, but excluding the Switzer Improvements, to be designed, developed, constructed and completed by Developer as described in Section 2.01 hereof.

"CID Ordinance" means Ordinance No. CID-3026, adopted by the City on February 17, 2014 as referenced in Recital H hereof and attached hereto as **Exhibit F**.

"CID Petition" means that certain petition submitted by Developer on or about February 12, 2014, a copy of which is attached hereto as **Exhibit C**.

"CID Project Costs" means the costs of designing, developing, constructing and completing the CID Project within the CID District, including both those Eligible Expenses to be paid CID Bonds, and those costs to be funded solely by Developer's private equity and debt and funds.

"CID/TDD Project Costs" means, collectively, the costs of designing, developing, constructing and completing the CID Project within the CID District and the TDD Project within

the TDD District, including both those Eligible Expenses to be paid with CID Bonds or Pay-As-You-Go TDD Financing, respectively, and those costs to be funded solely by Developer's private equity and debt and funds.

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

"City Funds" means the proceeds of bonds, temporary notes, obligations or other funds of the City to fund the Switzer Improvements.

"City Indemnified Parties" means the City, its employees, agents, independent contractors and consultants, all collectively for purposes of the indemnification provisions set forth in Section 2.06 hereof.

"Commission" means the Kansas Human Rights Commission as referred to in Section 2.08(b) hereof.

"Construction Management Fee" means a construction management fee of \$100.00 in exchange for Developer's design and construction management services provided under this Agreement.

"Contract Documents" shall mean all Switzer Improvements construction and development contracts and subcontracts.

"Contractor" shall mean the general contractor selected to construct the Switzer Improvements.

"Current Switzer ROW" means the Switzer Road right-of-way which is owned by the City and bi-sects the Project site as described in Section 3.05(a) hereof.

"Damaged Facilities" means the Project or any part thereof being damaged or destroyed by a casualty.

"Developer" means College 69 Associates, LLC, a Kansas limited liability company.

"Development Plan" means the preliminary development plan and the final development plan for the TDD Improvements and Switzer Improvements 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.

"Districts" shall mean the CID District and the TDD District.

"DOR" means the Kansas Department of Revenue as set forth in Section 4.03.

"EDRB" means economic development revenue bond financing, as described in detail in Section 4.07.

"Effective Date" means February ____, 2014.

"Eligible Expenses" means CID/TDD Project Costs that are "costs" or a "project" (as defined by the CID Act or TDD Act, respectively) and therefore eligible for reimbursement under the CID Act or TDD Act, respectively, and certified by the City hereunder as reimbursable with CID Bond Proceeds or TDD Sales Tax proceeds, respectively, as well as the Administrative Fee.

"Engineer" shall mean the Engineer and design engineer for the Switzer Improvements as set forth in Section 3.02(b).

"Engineering Plans" shall mean the Engineering Plans prepared by the Engineer for the Switzer Improvements.

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

"Existing Switzer Road" means Switzer Road as it currently exists as of the Effective Date between Indian Creek Parkway and College Boulevard.

"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.

"Guarantor" means BK Properties, LLC, the guarantor described in Section 3.03 hereof and the party to the Switzer Damages Guaranty attached hereto as **Exhibit J**.

"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.

"Improvements" means those buildings, parking structures and other improvements constituting the Parking Improvements, CID Improvements, and the Switzer Improvements as set forth in this Agreement.

“KDOT” means the Kansas Department of Transportation.

"Landscaping Plan" means the plan reasonably approved by the City to include, without limitation, a walkway and trail system, internal parks, green spaces and new trees and other landscaping for the Project Site.

“Net Proceeds” means, with respect to the CID Bonds, the principal amount of the CID Bonds, less all costs of issuance including any underwriter’s discount, less any amounts allocated to a bond reserve, plus any premium paid to the City.

"Parking Improvements" means structured parking improvements as described in Section 2.01 of this Agreement.

"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 4.03 hereof.

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

"Permitted Modification" means Developer's right to modify the scope and physical parameters of the TDD Improvements 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 Improvements as set forth in connection with the Performance Milestones described in Section 2.06 hereof and as more fully described in Exhibit I attached hereto

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

"Project" shall mean the design, development and construction of certain new facilities on the Project Site as more particularly set forth in Article II and Article III of this Agreement.

"Project Costs" shall mean the Switzer Improvement Costs and the CID/TDD Project Costs.

"Project Site" means that certain real property which is located in the City and is bounded on the North by College Boulevard, on the East by U.S. Highway 69, on the South by 115th Street and on the West by Neiman Road, a general boundary map of which is set forth on Exhibit A attached hereto.

"Public Financing" means public incentives utilized by Developer for the Project, including the CID Bonds, and the Pay-As-You-Go TDD Financing, and the City Funds.

"Public Financing Proceeds" means, collectively, the proceeds from the City Funds, CID Bonds and Pay-As-You-Go TDD Financing, if any.

"Qualified Institutional Buyers" means institutional investors including, without limitation, insurance companies, funds and state or federally chartered financial institutions, or other entities which are fully qualified to buy private placements under Securities Exchange Commission Rule 144A.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.06(b) hereof.

"Relocated Switzer Road" means the new Switzer Road south of College Boulevard to Indian Creek Parkway constructed as part of the Switzer Improvements.

"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.

"Switzer Damages" means those damages which shall be payable by Developer if and to the extent that Developer fails to construct certain portions of the Project in accordance with the terms and the schedule set forth in Section 3.03 hereof.

"Switzer Damages Deadline" means December 31, 2024, as such date may be extended pursuant to the terms of Section 3.03 hereof.

"Switzer Damages Guaranty" means the guaranty described in Section 3.03(d) and the form of which is attached hereto as **Exhibit J**.

"Switzer Improvement Costs" means the costs of designing, developing, constructing and completing the Switzer Improvements, including both those Eligible Expenses to be paid by City Funds, and those costs to be funded solely by Developer's private equity and debt and funds.

"Switzer Improvements" shall mean the design and construction of the improvements contemplated in Article III of this Agreement.

"Switzer Improvements ROW" means the right-of-way required to accommodate the Switzer Improvements as set forth in Section 3.05(a) hereof.

"Switzer Scope of Work" means the anticipated scope of work for the Switzer Improvements.

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

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

"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 4.03(c) hereof. The TDD Cap is Seven Million One Hundred Sixty Thousand and 00/100 Dollars (\$7,160,000.00).

"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 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 4.03(e) hereof.

"TDD District" means the transportation development district encompassing the Project as set forth on **Exhibit D-1** and **Exhibit D-2**.

"TDD Improvements" means the structured parking facility to be constructed in connection with and incorporated into the mixed-use retail and residential portion of the Project identified as III-MXD on the Development Plan, the costs of which are reimbursable under the TDD 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 P** hereto.

"TDD Ordinance" means Ordinance No. TDD-3032, adopted by the City on February 17, 2014 as referenced in Recital I hereof and attached hereto as **Exhibit G**.

"TDD Petition" means that certain petition submitted by Developer on or about November 18, 2013, a copy of which is attached hereto as **Exhibit E**.

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

"TDD Project Costs" means the costs of designing, developing, constructing and completing the TDD Project within the TDD District, 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 4.03(a) 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 Districts, and that is used to finance the TDD Improvements pursuant to the TDD 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.

"Trails" means the trail system generally set forth on Exhibit R attached hereto and described in Section 8.10 hereof.

EXHIBITS

- Exhibit A: Project Site – Map
- Exhibit B-1: CID District – Legal Description
- Exhibit B-2: CID District – Boundary Map
- Exhibit C: The CID Petition
- Exhibit D-1: TDD District – Legal Description
- Exhibit D-2: TDD District – Boundary Map
- Exhibit E: TDD Petition
- Exhibit F: CID Ordinance
- Exhibit G: TDD Ordinance
- Exhibit H: Overall Project Budget / Improvements
- Exhibit I: Phases / Performance Milestones
- Exhibit J: Switzer Damages Guaranty
- Exhibit K: Insurance Specifications
- Exhibit L: Switzer Improvements Description and Drawings
- Exhibit M: Construction Management Services and Duties
- Exhibit N: Form of Assumption and Acknowledgement
- Exhibit O: CID Project Costs
- Exhibit P: TDD Project Costs
- Exhibit Q: Switzer Improvement Costs
- Exhibit R: Trails
- Exhibit S: Form of Certificate of Expenditure

EXHIBIT A
PROJECT SITE – BOUNDARY MAP

EXHIBIT A

DB04/0102125.0142/9909026.8

1) Summary of the Project

The overall vision of the project is to provide a series of individual parcels that can be developed as the market demands but are also connected by trails, green spaces, community amenities, a reconstructed stream corridor, and a consistent look and feel. The project is located at 69 Highway and College Boulevard. While it consists of multiple zoning classifications including MXD, CPO, and RP6, the intent is to integrate the MXD Zoning parcels into the overall development. The MXD parcels are generally located on the South West corner and consist of Parcels III and VII.

LOCATION MAP:



Development Site Plan:



Total Development = Approximately 118 Acres

MXD Parcels = Approximately 10 Acres

Parcel III includes 412 residential units and 14,000 square feet of Retail Space

Parcel VII consists of 25,850 square feet of Retail Space



PARCEL 1 - RP-6		PARCEL 2 - RP-6		PARCEL 3 - RP-6		PARCEL 4 - RP-6		PARCEL 5 - RP-6		PARCEL 6 - RP-6		PARCEL 7 - RP-6	
SITE AREA	12.82 AC	SITE AREA	12.82 AC	SITE AREA	12.82 AC	SITE AREA	12.82 AC	SITE AREA	12.82 AC	SITE AREA	12.82 AC	SITE AREA	12.82 AC
DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC	DENSITY PROPOSED	31.87 UNITS/AC
DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC	DENSITY ALLOWED	38 UNITS/AC
IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%	IMPERVIOUS COVERAGE	40.0%
COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%	COMMON OPEN SPACE PROVIDED	10.0%

- = WALKING TRAIL
- = MAINTAINED AREA
- = NATIVE AREA
- = EXISTING TREES TO REMAIN
- = SHADE/STREET TREE
- = EVERGREEN TREE
- = ORNAMENTAL TREE
- = RETAIL
- = OFFICE
- = RESIDENTIAL - MIXED USE
- = RESIDENTIAL - SENIOR LIVING
- = RESIDENTIAL - APARTMENTS
- = ACCESSORY STRUCTURE

CITY PLACE
REZONING/PRELIMINARY DEVELOPMENT PLAN / SUP - SOUTH PROPERTY
COLLEGE BLVD. & U.S. HWY 69 SITE - OVERLAND PARK, KANSAS

SCALE 1"=100'-0"
 0' 0" 50' 100'
 JANUARY 3, 2014

PRESENTED BY:
BLOCK
 REAL ESTATE SERVICES, L.L.C.
 IN A PARTNERSHIP WITH:
 NSPJ
 NATIONAL SPONSORED PROFESSIONAL JOURNALISTS ASSOCIATION
 ARCHITECTS
 HOEFER WYSOCKI
 Architecture
 OLSSON ASSOCIATES

EXHIBIT B-1

CID DISTRICT – LEGAL DESCRIPTION

All that part of the Northeast Quarter of Section 14, Township 13 South, Range 24 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

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EXHIBIT B-1

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EXHIBIT B-1

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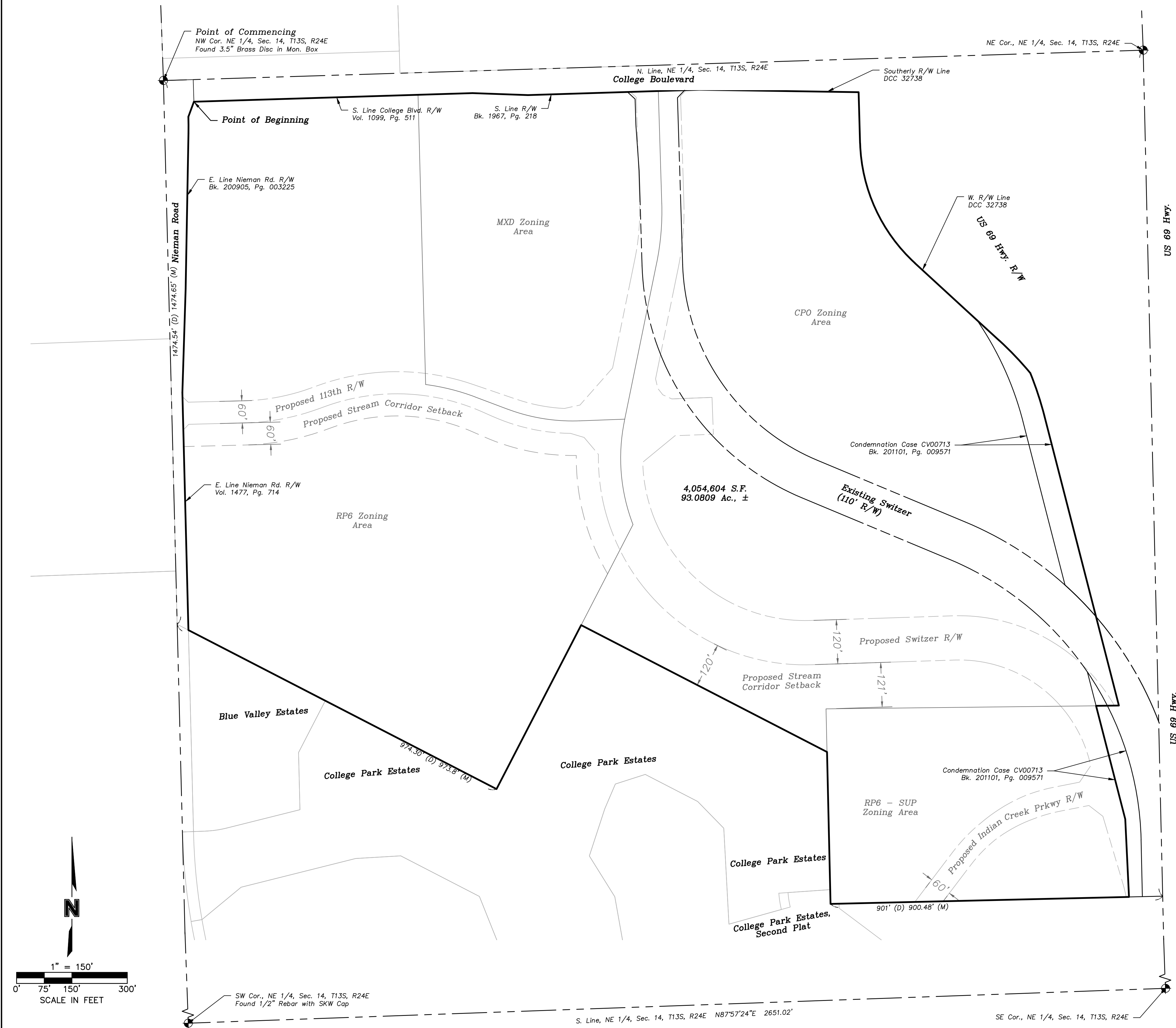
EXHIBIT B-2

CID DISTRICT — BOUNDARY MAP

EXHIBIT B-2

Rezoning Exhibit of College Boulevard and 69 Highway

Part of the Northeast Quarter of Section 14, Township 14 South, Range 25 East, in Overland Park, Johnson

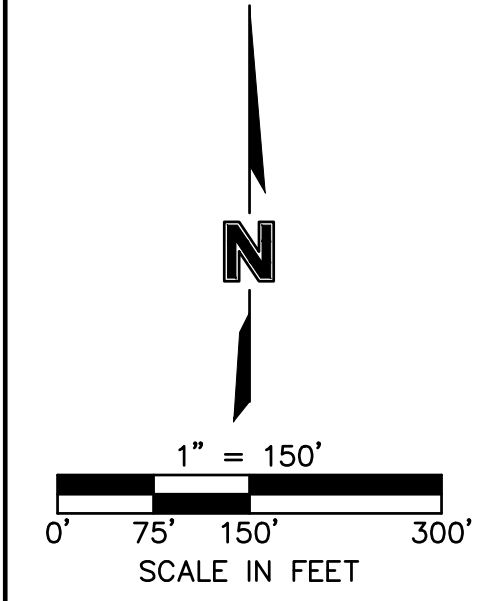


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USER: jpeckham
 DATE: Oct 22, 2013 7:46am
 PREPARED BY:
 Prepared By:
 Olsson Associates
 7301 West 133rd Street, Suite 200
 Overland Park, Kansas 66213
 Telephone: (913) 381-1170



LEGEND

- ◆ SECTION CORNER
- (M) MEASURED
- (P) PLATTED
- (D) DESCRIBED

EXHIBIT C
THE CID PETITION

EXHIBIT C

**PETITION FOR THE CREATION OF A
COMMUNITY IMPROVEMENT DISTRICT
And the Withdrawal of A Transportation
Development District Petition
(CITY PLACE)**



TO: City Council,
City of Overland Park, Kansas

The undersigned, being the owners of record, whether resident or not, of all of the land area within the hereinafter described community improvement district (excluding public right-of-way) hereby petitions the City of Overland Park, Kansas (the “City”) to create the City Place Community Improvement District (“CID”) and authorize the proposed CID project (the “CID Project”) hereinafter set forth, all in the manner provided by K.S.A § 12-6a26, *et seq.* (the “Act”) and hereby withdraws the Petition for the Creation of the City Place Transportation Development District #1, filed with the City on November 18, 2013 (the “TDD Petition”). In furtherance of such request, the Petitioners state as follows:

1. GENERAL NATURE

The general nature of the proposed CID Project is set forth in **EXHIBIT “A”**, attached hereto and incorporated by reference herein. The CID Project shall include, but not be limited to the design and construction of 113th Street and Indian Creek Parkway, and all associated infrastructure and improvements.

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

2. ESTIMATED COST

The estimated cost of the CID Project is Six Million, Thirty-One Thousand, Four Hundred Twenty-Eight and No/100 Dollars (\$6,031,428).

3. PROPOSED METHOD OF FINANCING

The proposed method of financing the CID Project is through the issuance of special obligation CID bonds/notes.

4. PROPOSED METHOD AND AMOUNT OF ASSESSMENT

Assessments will be levied upon all property within the CID in an amount estimated at Six Million, Thirty-One Thousand, Four Hundred Twenty-Eight and No/100 Dollars (\$6,031,428). The total assessment amount shall be spread per square foot of land area, excluding right-of-way, and shall be levied in installments on an annual basis for a maximum of twenty (20) years in equal installments each year. The assessments shall be used to pay for the cost of the CID Project.

46904534.2
46904534.4

5. MAP AND LEGAL DESCRIPTION OF THE PROPOSED CID

A map of the proposed CID is attached hereto at **EXHIBIT "B"**.

The legal description of the proposed CID is attached hereto at **EXHIBIT "C"**.

6. NOTICE TO PETITION SIGNER

Petitioners hereby acknowledge 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.

Petitioners hereby consent to any assessments to the extent described herein without regard to the benefits conferred by the CID Project.

7. PETITION BINDING ON FUTURE OWNERS

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

8. BOND MARKETABILITY

Petitioners hereby acknowledge that the City will record this Petition if the proposed CID Project is approved by the City Council and that by the acceptance of this Petition, the City Council is not making any representation as to the marketability of CID bonds/notes to finance the CID Project described in this Petition. The Petitioners assumes the risk that such CID bonds/notes can be issued under terms acceptable to the City.

9. COUNTERPARTS

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. WITHDRAWAL OF TDD PETITION

The undersigned, being the owners of record, whether resident or not, of all of the land area within the transportation development district referenced in the TDD Petition (excluding public right-of-way) hereby withdraw said TDD Petition.

11. ACKNOWLEDGMENTS

Petitioners acknowledge that:

(A) The City's approval of this Petition or of the CID Project set forth in this Petition and creation of a CID by the City as proposed in this Petition does not eliminate independent requirements by the Petitioners 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 CID Project set forth in this Petition without independent investigation as to the accuracy of such estimates;

(C) the implementation of the CID proposed by the Petition is subject to the terms of a reimbursement or development agreement to be entered into between the City and the expected future owners of all land within the CID, BK Properties, LLC, or an affiliate or associated entity thereof; and

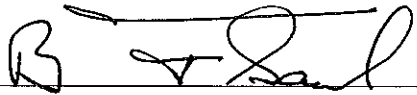
(D) in the event that BK Properties, LLC does not execute and close on the land purchase documents under which the present owners transfer all their right, interest and title in the property (as described in Exhibit C) to BK Properties, LLC, on or before June 1, 2014, the Petitioners acknowledge that the City will dissolve the CID.

(E) ~~The Petitioners have~~ ^{BK Properties, LLC} entered into a Funding Agreement dated November 18, 2013 to pay for the costs and fees associated with the TDD, and ~~the Petitioners will~~ enter into a First Amendment to Funding Agreement to provide for payment of the Charges associated with the CID as provided in the First Amendment to Funding Agreement.

[No further text on this page]

IN WITNESS WHEREOF, the undersigned Petitioners has executed the above foregoing Petition to create the CID and withdrawal of the TDD on the date set forth below:

Parcel #1 (NF241314-3003)
B. Francis Saul II, as Trustee for
B.F. Saul Real Estate Investment Trust

By: 
ds Name: B. Francis Saul II
Title: Trustee

Parcel #2 (NF241314-3011)
Dearborn, L.L.C., a Delaware limited liability
Company f/k/a Dearborn Corporation

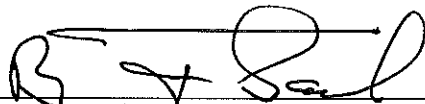
By: 
ds Name: B. Francis Saul II
Title: Chief Executive Officer

EXHIBIT "A"

GENERAL NATURE OF PROPOSED CID PROJECT

The general components of the CID Project include but are not limited to: design and construction of 113th Street and Indian Creek Parkway improvements to include the streets; sidewalks; streetscape; sanitary and storm sewers; drainage conduits, basins, and channels, including the relocation and reengineering of the onsite stream way; street light fixtures; water main and extensions; public trail corridor system; entrance monuments; power infrastructure; earthwork; retaining walls; utility improvements and relocation; landscaping; and all associated costs and fees.

EXHIBIT "B"

MAP OF CID

SEE DRAWINGS ATTACHED FOLLOWING THIS PAGE.

EXHIBIT "C"

LEGAL DESCRIPTION OF CID

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EXHIBIT D-1

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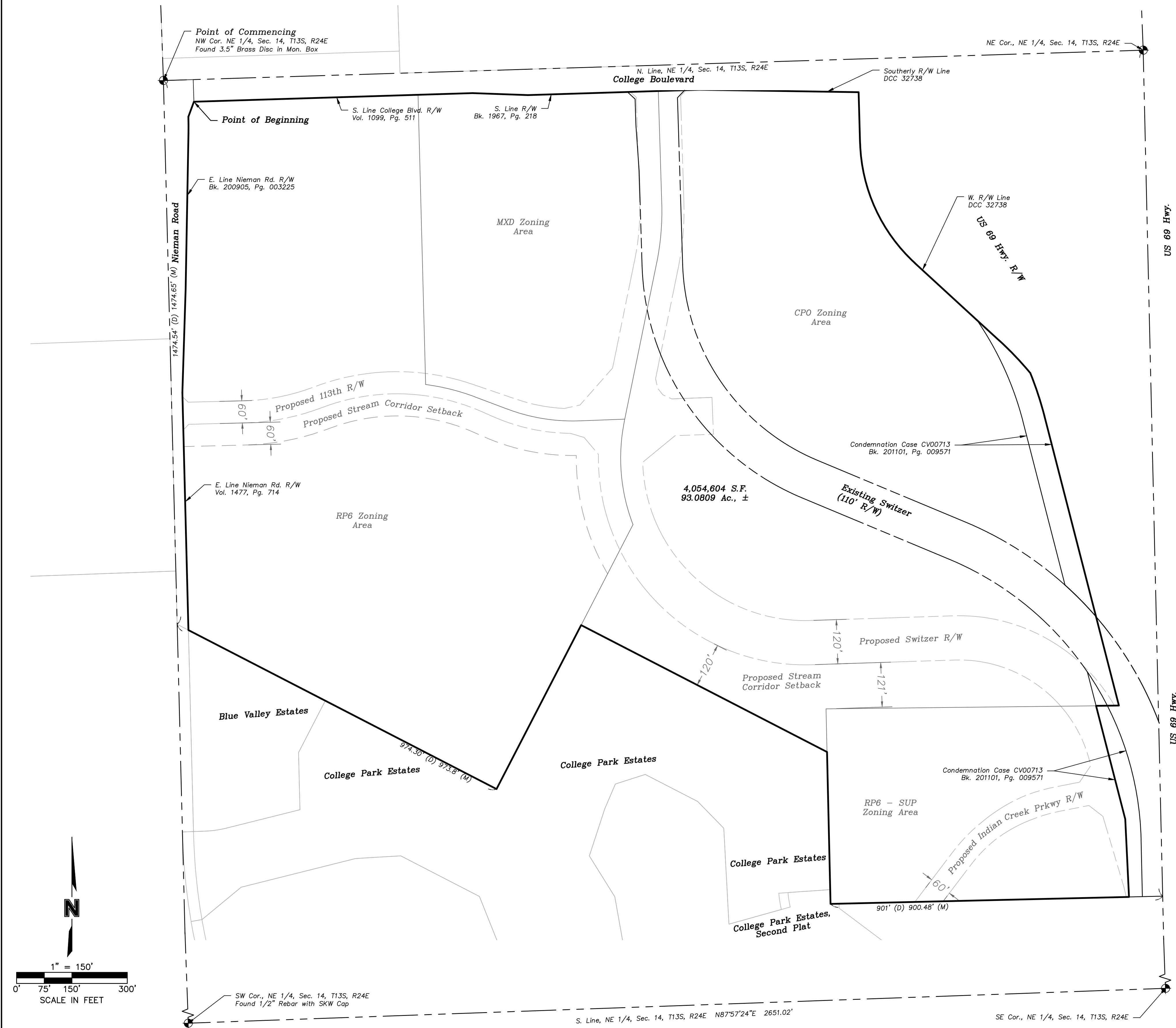
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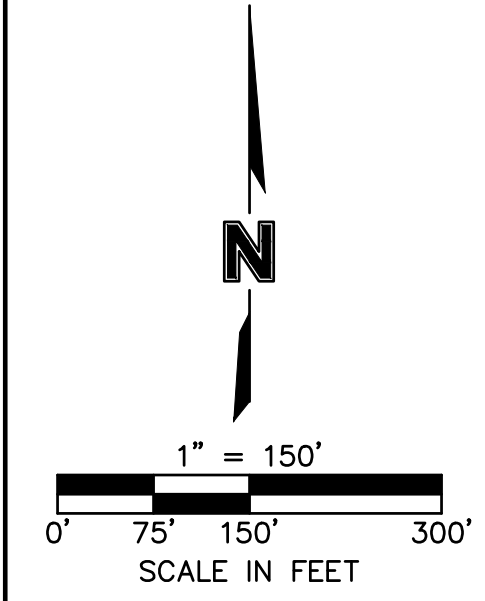


Rezoning Description- South Parcel

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COMMENCING at the Northwest corner of the Northeast Quarter of Section 14, Township 13 South, Range 24 East; thence North 88 degrees 13 minutes 33 seconds East along the North line of the Northeast Quarter of said Section 14 a distance of 80.80 feet to a point; thence South 1 degree 46 minutes 27 seconds East a distance of 60.01 feet to a point on the South right of way line of College Boulevard, the POINT OF BEGINNING; thence North 88 degrees 13 minutes 30 seconds East along the South right of way line of College Boulevard a distance of 755.47 feet to a point; thence South 87 degrees 57 minutes 36 seconds East along the South right of way line of College Boulevard a distance of 150.32 feet to a point; thence North 88 degrees 13 minutes 33 seconds East along the South right of way line of College Boulevard a distance of 465.04 feet to a point; thence South 89 degrees 07 minutes 29 seconds East along the South right of way line of College Boulevard a distance of 431.50 feet to a point on the West right of way line of US 69 Highway; thence South 1 degree 38 minutes 29 seconds East along the West right of way line of US 69 Highway a distance of 138.60 feet to a point; thence in a Southeasterly direction along the West right of way line of US 69 Highway and along a curve to the left whose initial tangent bears South 1 degree 41 minutes 33 seconds East, having a radius of 459.26 feet, through a central angle of 45 degrees 47 minutes 54 seconds, an arc distance of 367.10 feet to a point; thence South 47 degrees 25 minutes 34 seconds East along the West right of way line of US 69 Highway a distance of 227.98 feet to a point; thence South 47 degrees 28 minutes 40 seconds East a distance of 82.14 feet to a point; thence in a Southeasterly direction along a curve to the right, having a radius of 904.93 feet, through a central angle of 7 degrees 45 minutes 02 seconds, an arc distance of 122.41 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 21 degrees 57 minutes 18 seconds East, having a radius of 930.00 feet, through a central angle of 7 degrees 31 minutes 49 seconds, an arc distance of 122.23 feet to a point; thence South 14 degrees 25 minutes 29 seconds East a distance of 810.42 feet to a point; thence South 89 degrees 20 minutes 56 seconds West a distance of 61.78 feet to a point on the West right of way line of US 69 Highway; thence South 14 degrees 25 minutes 29 seconds East along the West right of way line of US 69 Highway a distance of 317.40 feet to a point; thence South 2 degrees 44 minutes 46 seconds East along the West right of way line of US 69 Highway a distance of 211.00 feet to a point on the Easterly prolongation of the Northerly line of College Park Estates, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 88 degrees 40 minutes 01 seconds West along the Northerly line of said College Park Estates, Second Plat and said prolongation a distance of 809.15 feet to a point; thence North 1 degree 19 minutes 39 seconds West along the Northerly line of said College Park Estates, Second Plat and the Easterly line of College Park Estates, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 411.93 feet to the Northeasterly corner of said College Park Estates; thence North 62 degrees 42 minutes 33 seconds West along the Northerly line of said College Park Estates a distance of 750.00 feet to a point; thence South 27 degrees 17 minutes 27 seconds West along the Northerly line of said College Park Estates a distance of 500.00 feet to a point; thence North 62 degrees 42 minutes 33 seconds West along the Northerly line of said College Park Estates and the Northerly line of Blue Valley Estates, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 939.80 feet to a point on the East right of way line of Nieman Road; thence North 1 degree 26 minutes 55 seconds West along the East right of way line of Nieman Road a distance of 643.85 feet to a point; thence North 1 degree 47 minutes 54 seconds East along the East right of way line of Nieman Road a distance of 282.20 feet to a point; thence North 1 degree 01 minutes 39 seconds East along the East right of way line of Nieman Road a distance of 420.78 feet to a point; thence in a Northerly direction along the East right of way line of Nieman Road and along a curve to the left, having a radius of 1045.00 feet, through a central angle of 2 degrees 28 minutes 34 seconds, an arc distance of 45.16 feet to a point; thence North 20 degrees 10 minutes 48 seconds East along the East right of way line of Nieman Road a distance of 43.41 feet to the POINT OF BEGINNING and containing 4,054,604 Square Feet or 93.0809 Acres, more or less.

USER: jpeckham
 DATE: Oct 22, 2013 7:46am
 PREPARED BY:
 Prepared By:
 Olsson Associates
 7301 West 133rd Street, Suite 200
 Overland Park, Kansas 66213
 Telephone: (913) 381-1170



LEGEND

- ◆ SECTION CORNER
- (M) MEASURED
- (P) PLATTED
- (D) DESCRIBED

EXHIBIT E
TDD PETITION

EXHIBIT E

**PETITION FOR THE CREATION OF CITY PLACE
TRANSPORTATION DEVELOPMENT DISTRICT #2**



TO: City Council, City of Overland Park, Kansas

The undersigned, being the owners of record, whether resident or not, of one hundred percent (100%) of the land area contained within the hereinafter described City Place Transportation Development District #2, hereby petition 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 Petitioners state as follows:

1. GENERAL NATURE OF TDD PROJECT

The general nature of the proposed TDD Project is set forth on EXHIBIT “A” attached hereto and incorporated herein by reference. The TDD Project shall include but not be limited to the design and construction of a parking garage and all associated infrastructure and improvements (the “TDD Parking Structure Improvements”).

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

2. MAXIMUM COST

The maximum cost of the TDD Project is \$7,160,000, comprised of all costs necessary for the construction of the TDD Parking Structure Improvements. The cost of the TDD Parking Structure Improvements will be financed through sales tax revenue produced within the TDD.

3. PROPOSED METHOD OF FINANCING

The proposed method of financing the TDD Project is through pay-as-you-go financing supported by revenues from a sales tax implemented within the TDD.

4. PROPOSED AMOUNT OF SALES TAX

It is proposed that a 1% sales tax be levied within the TDD for the maximum statutory period of twenty-two (22) years pursuant to the provisions of K.S.A. 12-17,145.

5. 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".

6. NOTICE TO PETITION SIGNERS

Petitioners hereby acknowledge that signatures may not be withdrawn from this Petition by the signers 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.

7. ACKNOWLEDGMENTS

Petitioners acknowledge 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 Petitioners 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;

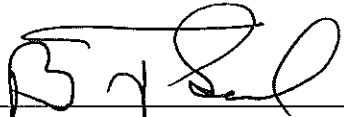
(C) the implementation of the TDD proposed by the Petition is subject to the terms of a reimbursement or development agreement to be entered into between the City and the expected future owners of all land within the TDD, BK Properties, LLC or an affiliate or associated entity thereof; and

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

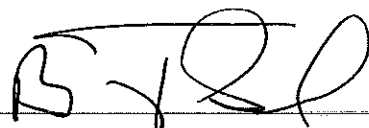
(E) in the event that BK Properties, LLC does not execute and close on the land purchase documents under which the present owners transfer all their right, interest and title in the property (as described in Exhibit B) to BK Properties, LLC, on or before June 1, 2014, the Petitioners acknowledge that the City will dissolve the TDD.

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

Parcel #1 (NF241314-3003):
B. Francis Saul II, as Trustee for
B.F. Saul Real Estate Investment Trust

By: 
Name: B. Francis Saul II
Title: Trustee

Parcel #2 (NF241314-3011):
Dearborn, L.L.C., a Delaware limited liability
company f/k/a Dearborn Corporation

By: 
Name: B. Francis Saul II
Title: Chief Executive Officer

ACKNOWLEDGMENT

STATE OF ~~KANSAS~~ MARYLAND)
) ss.
COUNTY OF ~~JOHNSON~~ MONTGOMERY)

BE IT REMEMBERED, that on this 13th day of November, 2013 before me, the undersigned, a Notary Public in and for said County and State, came B. Francis Saul II, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(seal)

Yzza Michelle Ramos Sanchez
Notary Public in and for said County and State

MY APPOINTMENT EXPIRES:

March 8, 2016

Yzza Michelle Ramos Sanchez
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 8, 2016

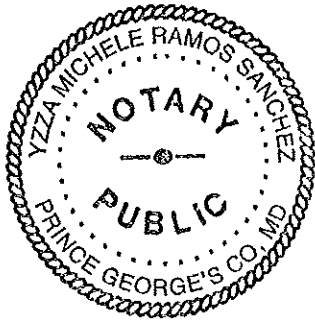


EXHIBIT "A"

GENERAL NATURE OF PROPOSED TDD PROJECT

To provide for transportation related infrastructure improvements as defined in K.S.A. 12-17,141 including but not limited to: design and construction of structured parking facilities; access control to said facilities; fire suppression and waterproofing of said facilities; ingress and egress to said facilities such as elevators, ramps, stairs, and fire-rated doors; traffic control signage for said facilities; and all associated costs and fees.

EXHIBIT "B"

MAP OF TDD

SEE DRAWINGS ATTACHED FOLLOWING THIS PAGE.

South Tract:

Parcel ID	Address	Acres	Assessed Value
NF241314-3003	N/A	34.34	\$2,424
NF241314-3011	N/A	55.26	\$3,816

Property Information for NF241314-3003

<i>Tax Property ID</i>	NF241314-3003	<i>KS Uniform Parcel #</i>	0460861401001001000
<i>Situs Address</i>	Not Available	<i>Acres</i>	32.71 (1,425,254.41 ft ²)
<i>Owner1 Name</i>	SAUL, B. FRANCIS II TRUSTEE	<i>Owner2 Name</i>	BLOOM, GARLAND J. JR TRUSTEE
<i>Owner Address</i>	0 NS NT, OVERLAND PARK, KS 00000		
<i>Class</i>	A	<i>Year Built</i>	0
<i>LBCS</i>	9010	<i>Neighborhood Code</i>	427.G
<i>Zoning</i>	RP-3	<i>Taxing Unit</i>	0665UW
<i>City</i>	Overland Park	<i>Zip Code</i>	66210
<i>AIMS Map No.</i>	K14 (T-R-S: 13-24-14)	<i>Quarter Section</i>	NE
<i>Fire Dist.</i>	Overland Park Fire	<i>Sheriff Dist.</i>	0
<i>Commissioner Dist.</i>	4 (Jason L. Osterhaus)	<i>FEMA Flood Panel #</i>	20091C0067G
<i>School District</i>	Blue Valley	<i>High School</i>	Blue Valley Northwest
<i>Middle School</i>	Oxford	<i>Elementary School</i>	Indian Valley
<i>Zoning Contact</i>	Erin Berzina - email:eberzina@bluevalleyk12.org		

Legal Desc. (abbreviated) 14-13-24 BG NE CR NE1/4 S 2294' W 901' N 412' NW 750' SW 500' NW 974.30' TO W/L NE1/4 N1474.54' TO NW CR E 2657.45' TO BG EX N 60' EX PT IN HWY EX 1.305 AC EX 6.736 AC EX 57.3303 AC & EX .281 AC IN RD 31.4897 ACS WL OPC 44 1

Property Map for NF241314-3003



Hide map

Property Information for NF241314-3011

<i>Tax Property ID</i>	NF241314-3011	<i>KS Uniform Parcel #</i>	0460861401001001010
<i>Situs Address</i>	Not Available	<i>Acres</i>	35.55 (1,549,042.01 ft ²)
<i>Owner1 Name</i>	DEARBORN CORPORATION	<i>Owner2 Name</i>	
<i>Owner Address</i>	7501 WISCONSIN AVE APT 1500, BETHESDA, MD 20814-6522		
<i>Class</i>	A	<i>Year Built</i>	0
<i>LBCS</i>	9010	<i>Neighborhood Code</i>	427.G
<i>Zoning</i>	CP-O	<i>Taxing Unit</i>	0665UW
<i>City</i>	Overland Park	<i>Zip Code</i>	66210
<i>AIMS Map No.</i>	K14 (T-R-S: 13-24-14)	<i>Quarter Section</i>	NE
<i>Fire Dist.</i>	Overland Park Fire	<i>Sheriff Dist.</i>	0
<i>Commissioner Dist.</i>	4 (Jason L. Osterhaus)	<i>FEMA Flood Panel #</i>	20091C0067G
<i>School District</i>	Blue Valley	<i>High School</i>	Blue Valley Northwest
<i>Middle School</i>	Oxford	<i>Elementary School</i>	Indian Valley
<i>Zoning Contact</i>	Erin Berzina - email: eberzina@bluevalleyk12.org		
<i>Legal Desc. (abbreviated)</i>	14-13-24 BG 614.80' E NW CR NE 1/4 S 532.06' SLY & SELY ALG CUR LF 1233.74' SE 319.98' SELY ALG CUR LF 396.25' SELY ALG CUR RT 280.86' SE 170.73' SELY ALG CUR RT 22.76' SWLY ALG CUR RT 211.77' SWLY ALG CUR LF 197.58' SW 47.35' E 76.43' NELY ALG CUR RT 170.01' NELY ALG CUR LF 247.29' SELY ALG CUR RT 330.36' E 102.64' TO E/L NE 1/4 N 2294' W 2042.26' TO POB EX .545 AC IN RD EX 1.15 AC IN RD EX .988 AC		

Property Map for NF241314-3011



Hide map

EXHIBIT "C"

LEGAL DESCRIPTION OF TDD

All that part of the Northeast Quarter of Section 14, Township 13 South, Range 24 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northwest corner of the Northeast Quarter of Section 14, Township 13 South, Range 24 East; thence North 88 degrees 13 minutes 33 seconds East along the North line of the Northeast Quarter of said Section 14 a distance of 80.80 feet to a point; thence South 1 degree 46 minutes 27 seconds East a distance of 60.01 feet to a point on the South right of way line of College Boulevard, the POINT OF BEGINNING; thence North 88 degrees 13 minutes 30 seconds East along the South right of way line of College Boulevard a distance of 755.47 feet to a point; thence South 87 degrees 57 minutes 36 seconds East along the South right of way line of College Boulevard a distance of 150.32 feet to a point; thence North 88 degrees 13 minutes 33 seconds East along the South right of way line of College Boulevard a distance of 465.04 feet to a point; thence South 89 degrees 07 minutes 29 seconds East along the South right of way line of College Boulevard a distance of 431.50 feet to a point on the West right of way line of US 69 Highway; thence South 1 degree 38 minutes 29 seconds East along the West right of way line of US 69 Highway a distance of 138.60 feet to a point; thence in a Southeasterly direction along the West right of way line of US 69 Highway and along a curve to the left whose initial tangent bears South 1 degree 41 minutes 33 seconds East, having a radius of 459.26 feet, through a central angle of 45 degrees 47 minutes 54 seconds, an arc distance of 367.10 feet to a point; thence South 47 degrees 25 minutes 34 seconds East along the West right of way line of US 69 Highway a distance of 227.98 feet to a point; thence South 47 degrees 28 minutes 40 seconds East a distance of 82.14 feet to a point; thence in a Southeasterly direction along a curve to the right, having a radius of 904.93 feet, through a central angle of 7 degrees 45 minutes 02 seconds, an arc distance of 122.41 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 21 degrees 57 minutes 18 seconds East, having a radius of 930.00 feet, through a central angle of 7 degrees 31 minutes 49 seconds, an arc distance of 122.23 feet to a point; thence South 14 degrees 25 minutes 29 seconds East a distance of 810.42 feet to a point; thence South 89 degrees 20 minutes 56 seconds West a distance of 61.78 feet to a point on the West right of way line of US 69 Highway; thence South 14 degrees 25 minutes 29 seconds East along the West right of way line of US 69 Highway a distance of 317.40 feet to a point; thence South 2 degrees 44 minutes 46 seconds East along the West right of way line of US 69 Highway a distance of 211.00 feet to a point on the Easterly prolongation of the Northerly line of College Park Estates, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 88 degrees 40 minutes 01 seconds West along the Northerly line of said College Park Estates, Second Plat and said prolongation a distance of 809.15 feet to a point; thence North 1 degree 19 minutes 39 seconds West along the Northerly line of said College Park Estates, Second Plat and the Easterly line of College Park Estates, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 411.93 feet to the Northeasterly corner of said College Park Estates; thence North 62 degrees 42 minutes 33 seconds West along the Northerly line of said College Park Estates a distance of 750.00 feet to a point; thence South 27 degrees 17 minutes 27 seconds West along the Northerly line of said College Park Estates a distance of 500.00 feet to a point; thence North 62 degrees 42 minutes 33 seconds West along the Northerly line of said College Park Estates and the Northerly line of Blue Valley Estates, a subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 939.80 feet to a point on the East right of way line of Nieman Road; thence North 1 degree 26 minutes 55 seconds West along the East right of way line of Nieman Road a distance of 643.85 feet to a point; thence North 1 degree 47 minutes 54 seconds East along the East right of way line of Nieman Road a distance of 282.20 feet to a point; thence North 1 degree 01 minutes 39

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SEE ALSO DRAWINGS ATTACHED AS EXHIBIT B.

EXHIBIT F
THE CID ORDINANCE

EXHIBIT F

EXHIBIT G
THE TDD ORDINANCE

EXHIBIT G

DB04/0102125.0142/9909026.8

EXHIBIT H

OVERALL PROJECT BUDGET / IMPROVEMENTS

EXHIBIT H

City Place
ROM - Overall Development Estimate
2/13/2014

Switzer ROW Costs	\$	8,350,000
CID Improvements	\$	6,050,000

Office	SF	Costs/BSF	Land Cost/BSF	Total Costs
Parcel VIII	92,500	\$ 192.02	\$ 33.01	\$ 20,815,699
Parcel IX	200,750	\$ 189.65	\$ 32.37	\$ 44,571,299
Parcel X	121,000	\$ 185.00	\$ 30.50	\$ 26,075,500
Parcel XI	186,000	\$ 187.31	\$ 31.11	\$ 40,626,585
Sub-totals	600,250			\$ 132,089,083

Multi-family	Units	Costs/Unit	Land Cost/Unit	Total Costs
Parcel I	361	\$ 111,751	\$ 12,204	\$ 44,747,755
Parcel II	281	\$ 108,473	\$ 11,730	\$ 33,777,043
Parcel III	412	\$ 152,300	\$ 12,448	\$ 67,876,176
Parcel IV	328	\$ 106,869	\$ 11,500	\$ 38,825,032
Parcel VI	140	\$ 125,000	\$ 12,500	\$ 19,250,000
Sub-totals	1,522			\$ 204,476,006

Retail	SF	Costs PSF	Land Cost/BSF	Total Costs
Pad A	5,025	\$ 168.25	\$ 94.60	\$ 1,320,821
Pad B	5,456	\$ 168.25	\$ 94.60	\$ 1,434,110
Pad C	5,332	\$ 168.25	\$ 94.60	\$ 1,401,516
Pad D	10,044	\$ 168.25	\$ 94.60	\$ 2,640,065
Parcel IIIB	14,003	\$ 173.33	\$ 98.42	\$ 3,805,315
Sub-totals	39,860			\$ 6,796,512

Development Total

\$ 357,761,601

EXHIBIT I

PHASES / PERFORMANCE MILESTONES

Parcel	Description <i>(see map below)</i>	Start Year	Completion Year
IV	RP-6 Residential Apartments “Bldg 5”	2014	2016
X	CP-O Office	2015	2016
VI	RP-6 (SUP) Residential Senior Living	2015	2017
II	RP-6 Residential Apartments “Bldg 1-5”	2016	2018
VII	MXD “Bldg 1-4”	2017	2018
VIII	CP-O Office	2017	2018
IX	CP-O Office	2018	2019
I	RP-6 Residential Apartments “Bldg 1-5”	2018	2020
III & IIIB	MXD Residential Mixed Use	2019	2021
XI	CP-O Office	2020	2021



EXHIBIT I

EXHIBIT J

SWITZER DAMAGES GUARANTY

THIS SWITZER DAMAGES GUARANTY AGREEMENT dated as of February _____, 2014 (this “**Guaranty**”), between BK Properties, LLC, a Missouri limited liability company (“**Guarantor**”) and the City of Overland Park, Kansas (the “**City**”);

WITNESSETH:

A. The City and College 69 Associates, LLC, a Kansas limited liability company (“**Developer**”) have entered into that certain Development Agreement dated as of February ____, 2014 regarding the City Place development project (the “**Development Agreement**”), and all capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Development Agreement;

B. The Guarantor is related to Developer as follows: _____
_____;

C. Guarantor desires that the City enter into the Development Agreement with Developer;

D. As a condition of entering into the Development Agreement, the City has required the execution and delivery of a guaranty in the form hereof by Guarantor;

E. Developer and the Guarantor each separately and together derive substantial benefit from the operations of the Developer and the availability to the Developer of the Switzer Improvements, and the transactions contemplated in the Development Agreement;

NOW, THEREFORE, in consideration of the premises and in order to induce the City to enter into the Development Agreement and satisfy the terms thereof, the Guarantor does hereby, subject to the terms hereof, covenant and agree with the City as follows:

**ARTICLE I
REPRESENTATIONS OF THE GUARANTOR**

Section 1.1. Guarantor’s Representations. Guarantor does hereby represent and warrant that:

- (a) Guarantor is a Kansas limited liability company having power to enter into this Guaranty and neither this Guaranty nor the agreements herein contained contravene or constitute a default under any agreement, instrument or indenture to which he is a party; and
- (b) The execution of this Guaranty and the assumption by Guarantor of his obligations hereunder will result in a direct financial benefit to him.

EXHIBIT J

ARTICLE II THE GUARANTY

Section 2.1. Guaranty. Guarantor does hereby unconditionally and absolutely guarantee to the City the full, prompt and complete payment by Developer of all sums payable by Developer under Section 3.03(d) of the Development Agreement (the “**Guaranteed Obligations**”).

All payments by the Guarantor shall be made in lawful money of the United States of America. Each and every default in payment or performance of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 2.2. Guaranteed Obligations. Without limiting the generality of Section 2.1 above, if for any reason whatsoever, Developer: (i) fails to pay all or any portion of the Switzer Damages which become due and owing pursuant to Section 3.03 of the Development, and (ii) Developer's equity in the Project Site shall at any such time be less than the two hundred percent (200%) of Developer's potential Switzer Damages, then the City, in addition to the City's other rights, remedies, and resources, whether existing hereunder, under the Development Agreement or otherwise, may proceed under this Article II. In any such event, immediately after the City notifies Guarantor of Developer's failure to satisfy any condition in the Development Agreement, Guarantor agrees, at Guarantor's sole cost and expense, to pay to the City an amount equal to fifty percent (50%) of the difference between (a) the amount of Developer's equity in the Project Site, and (b) an amount equal to 200% of the Switzer Damages then due, in accordance with and subject to Section 3.03(d) of the Development.

Section 2.3 Guaranty Unconditional. Except as set forth in Section 3.1 below, the obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect, subject to termination under Section 5.4(b) below, until the Guaranteed Obligations shall have been paid and performed, or provision made for such payment and performance, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, the Guarantor:

- (a) The failure to give notice to the Guarantor of the occurrence of an event or default under the terms and provisions of this Guaranty or the Development Agreement;
- (b) The waiver of the payment, performance or observance by the City or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Development Agreement or in this Guaranty;
- (c) The extension of the time for payment or performance under this Guaranty or of the time for performance of any other obligations, covenants or agreements under or arising out of the Development Agreement or the extension or the renewal of either;
- (d) The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Development Agreement,

EXHIBIT J

provided that the obligations of the Guarantor are not thereby increased or expanded without its prior written consent;

- (e) Except as set forth in Section 3.1 below, any failure, omission, delay or lack on the part of the City to enforce, assert or exercise any right, power or remedy conferred on the City in this Guaranty, or any other act or acts on the part of the City;
- (f) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling or assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the City, the Developer or the Guarantor or any of the assets of any of them, or any contest of the validity of this Guaranty in such proceeding;
- (g) The default or failure of the Guarantor to perform fully any of its obligations set forth in the Guaranty.

Section 2.4 No Set Off. No set off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature which the Guarantor has or may come to have against the City shall be available hereunder to the Guarantor against the City respecting its obligations hereunder; provided that nothing contained herein shall prohibit the Guarantor from asserting any separate or related claim against the City in a separate proceeding, which proceeding shall in no way delay the prompt performance by the Guarantor of its obligations hereunder.

ARTICLE III REMEDIES ON DEFAULT

Section 3.1 Default Remedies. Upon a default in any Guaranteed Obligations when and as the same shall become due, the City may proceed hereunder following any applicable notice and cured periods as set forth in the Development Agreement.

Section 3.2 Waiver of Notice. The Guarantor hereby expressly waives notice from the City of its acceptance and reliance on this Guaranty. The Guarantor agrees to pay all reasonable costs, expenses and fees, including all reasonable attorneys' fees and expenses, which may be incurred by the City in enforcing or attempting to enforce this Guaranty following any default on the Guarantor's part hereunder, whether the same shall be enforced by suit or otherwise.

Section 3.3 Remedies not Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but subject to the terms of Section 3.1, any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy

EXHIBIT J

reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter such breach is duly waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but may be effected solely by an instrument in writing duly executed by the City. Notwithstanding the foregoing, Guarantor's liability hereunder for monetary amounts shall be limited to the actual amount of damages, if any, in question, and under no circumstances shall Guarantor be liable for any remote or consequential damages.

ARTICLE IV GENERAL COVENANTS AND AGREEMENTS

Section 4.1. Minimum Net Worth. Guarantor hereby covenants and agrees that it shall have and maintain a net worth of not less than \$8,000,000 for the duration of the term of this Guaranty (as the same may be terminated pursuant to Section 5.4(b) below).

Section 4.2 Effectiveness of Guaranty. This Guaranty shall only be effective when and if Developer's equity in the Project Site shall at any such time be less than the two hundred percent (200%) of Developer's potential Switzer Damages as described in Section 3.03(d) of the Development Agreement.

Section 4.3. Beneficiaries. This Guaranty is entered by the Guarantor for the benefit of the City.

Section 4.4 Submission to Jurisdiction. Guarantor covenants that it is and will remain subject to service of process in the State of Kansas so long as this Guaranty is in effect.

ARTICLE V MISCELLANEOUS PROVISIONS

Section 5.1 Definitions of Words and Terms. For all purposes of this Guaranty, except as otherwise provided or unless the context otherwise requires, words and terms used in this Guaranty have the same meanings as set forth in the Development Agreement.

Section 5.2 Guaranty Binding on Successors. The agreements obtained herein on the part of the Guarantor shall inure to and be binding upon its successors and assigns, including without limitations any successor or assign in any transaction expressly permitted by Section 4.1 hereof.

Section 5.3 Entire Agreement. This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the City with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument.

EXHIBIT J

Section 5.4 Term of Guaranty. Except as otherwise set forth herein, and as specifically set forth in Section 5.4(b) below, this Guaranty shall be continuing and there shall be no termination as respects Guarantor's liability or responsibility hereunder for or with respect to any of the Guaranteed Obligations. When the obligations set forth in Section 3.03(b) have been satisfied in full and the Switzer Damages have been waived by the City, or alternatively, if Developer shall pay any and all of the Switzer Damages, then this Guaranty shall be of no further force and effect; and thereafter, Guarantor shall have the right to request that the City certify that this Guaranty is terminated, and if the City, acting reasonably, determines that either of the conditions set forth in this sentence have been satisfied, then it will certify to Guarantor that this Guaranty is terminated and shall return to Guarantor the original copy of this Guaranty.

Section 5.5 Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty shall not affect the validity or enforceability of any remaining portions of this Guaranty.

Section 5.6 Governing Law. This Guaranty shall be governed by and be construed and interpreted in accordance with the laws of the State of Kansas.

(Signature pages to follow.)

EXHIBIT J

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed in his name as of the date first above written.

EXHIBIT J

EXHIBIT K

INSURANCE SPECIFICATIONS

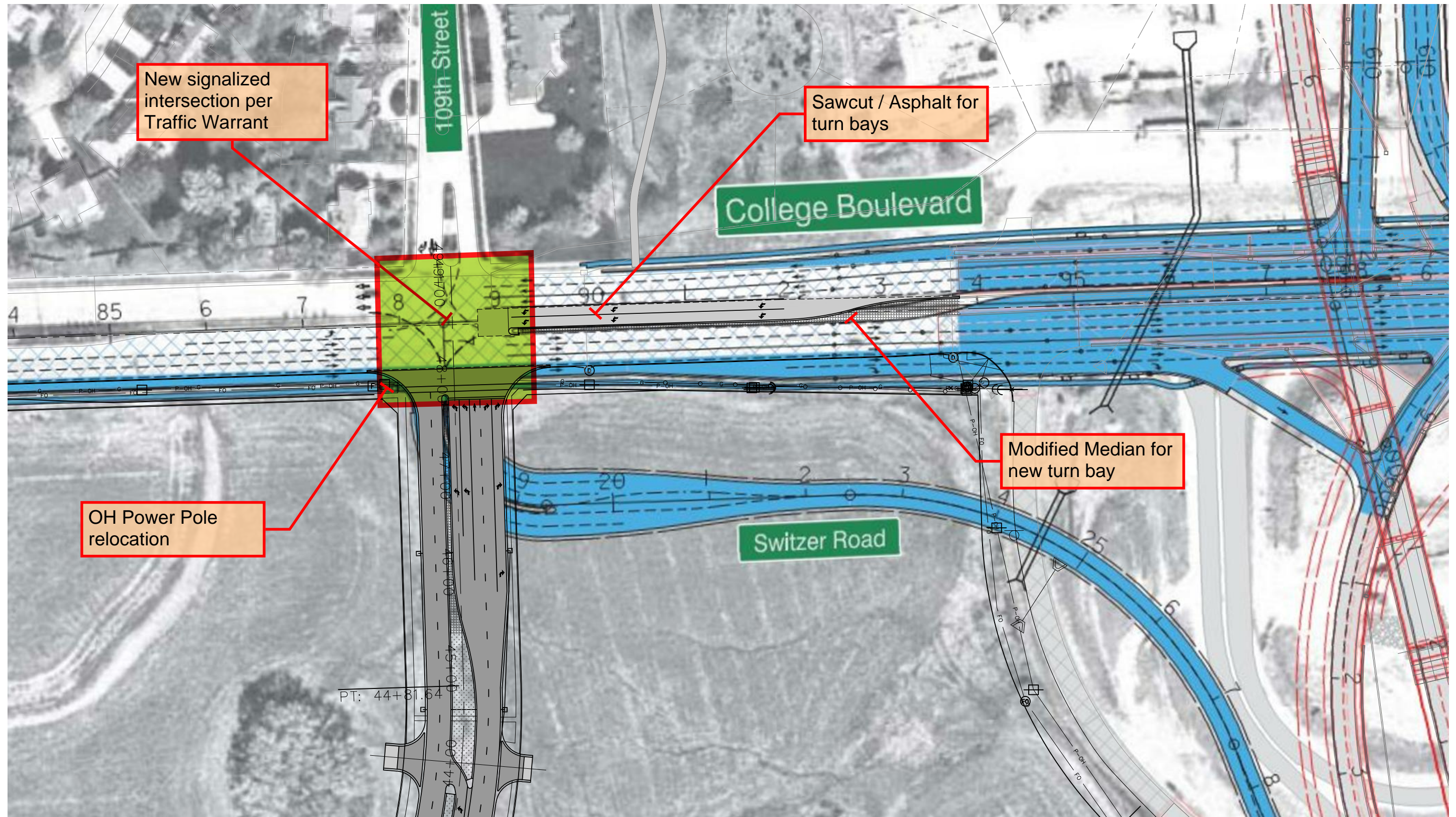
1. Worker's Compensation (as applicable). Developer may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. 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 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.

EXHIBIT K

EXHIBIT L

SWITZER IMPROVEMENTS DESCRIPTION AND DRAWINGS

EXHIBIT L



PROJECT NO: 013-2212

DRAWN BY: JLP

DATE: 01/10/2014

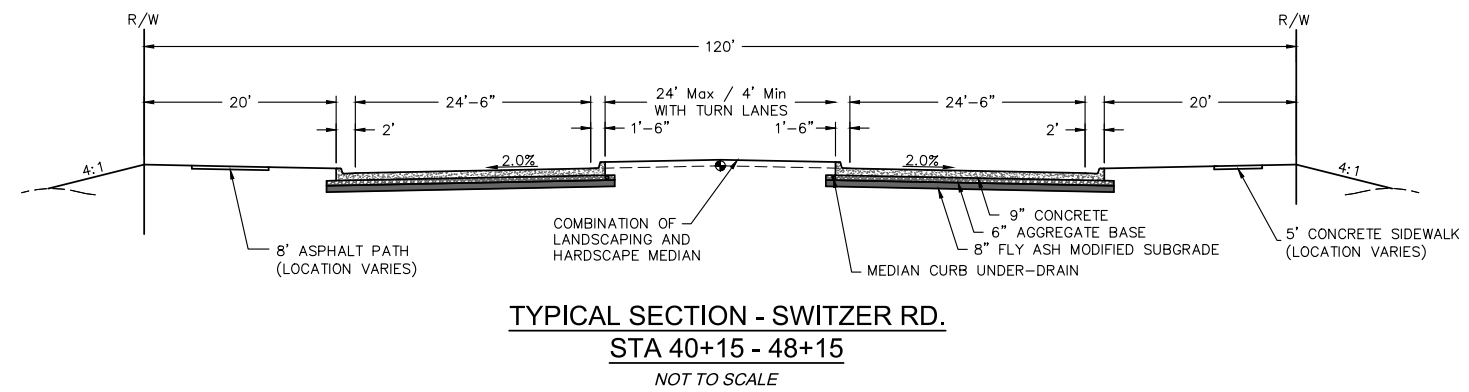
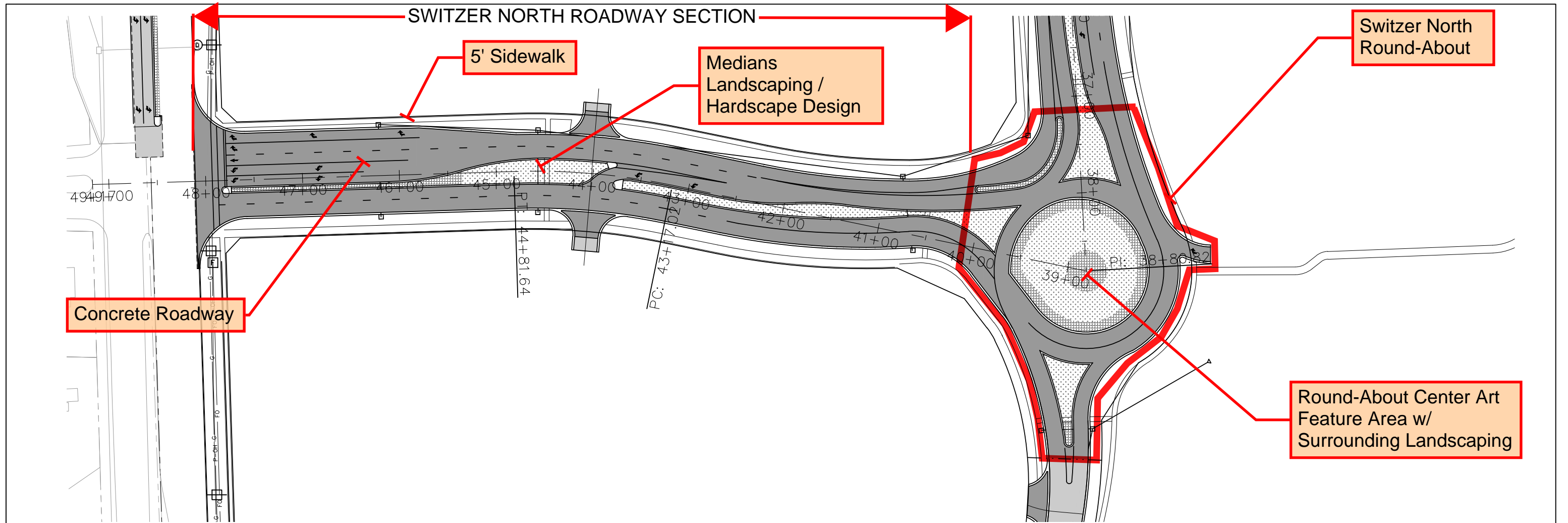
**CITY PLACE - COST ESTIMATE EXHIBIT
COLLEGE / SWITZER INTERSECTION**



7301 West 133rd Street
Suite 200
Overland Park, KS 66213-4750
TEL 913.381.1170
FAX 913.381.1174

EXHIBIT

1

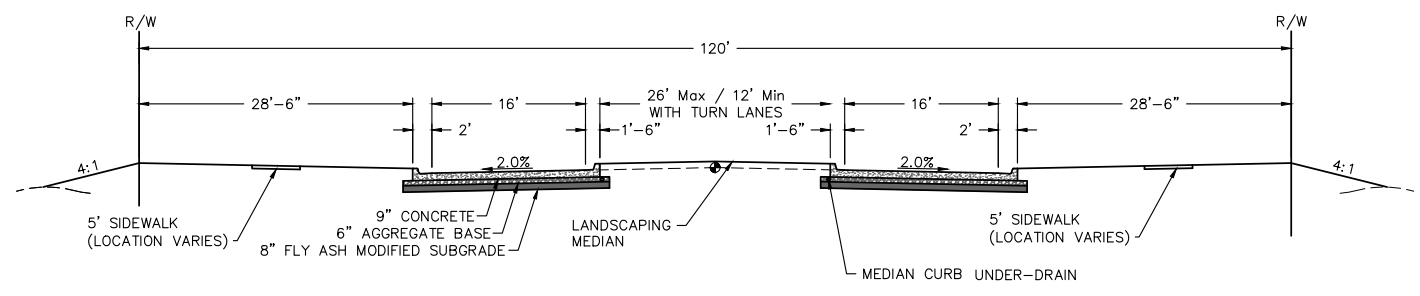
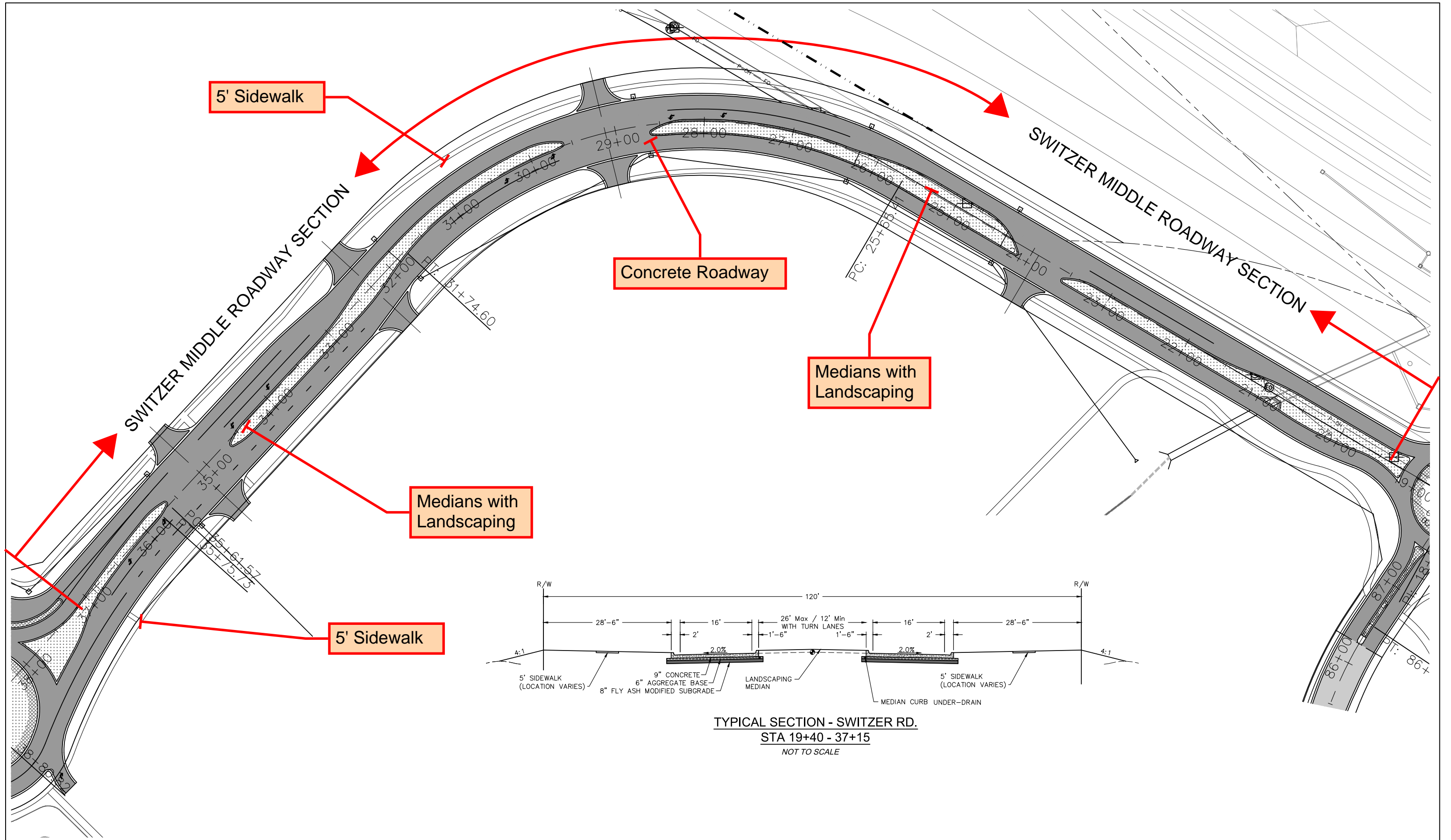


PROJECT NO: 013-2212
DRAWN BY: JLP
DATE: 01/10/2014

CITY PLACE - COST ESTIMATE EXHIBIT
NORTH SWITZER ROAD SECTION & NORTH ROUND-ABOUT

MOLSSON ASSOCIATES
7301 West 133rd Street
Suite 200
Overland Park, KS 66213-4750
TEL 913.381.1170
FAX 913.381.1174

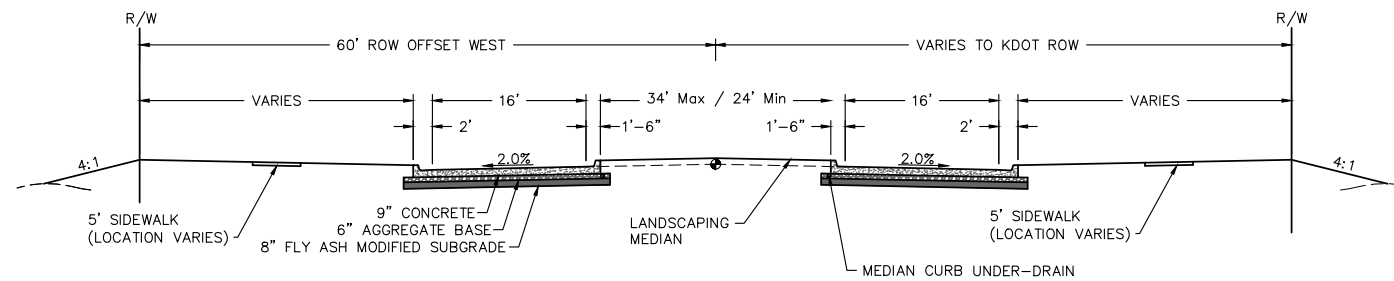
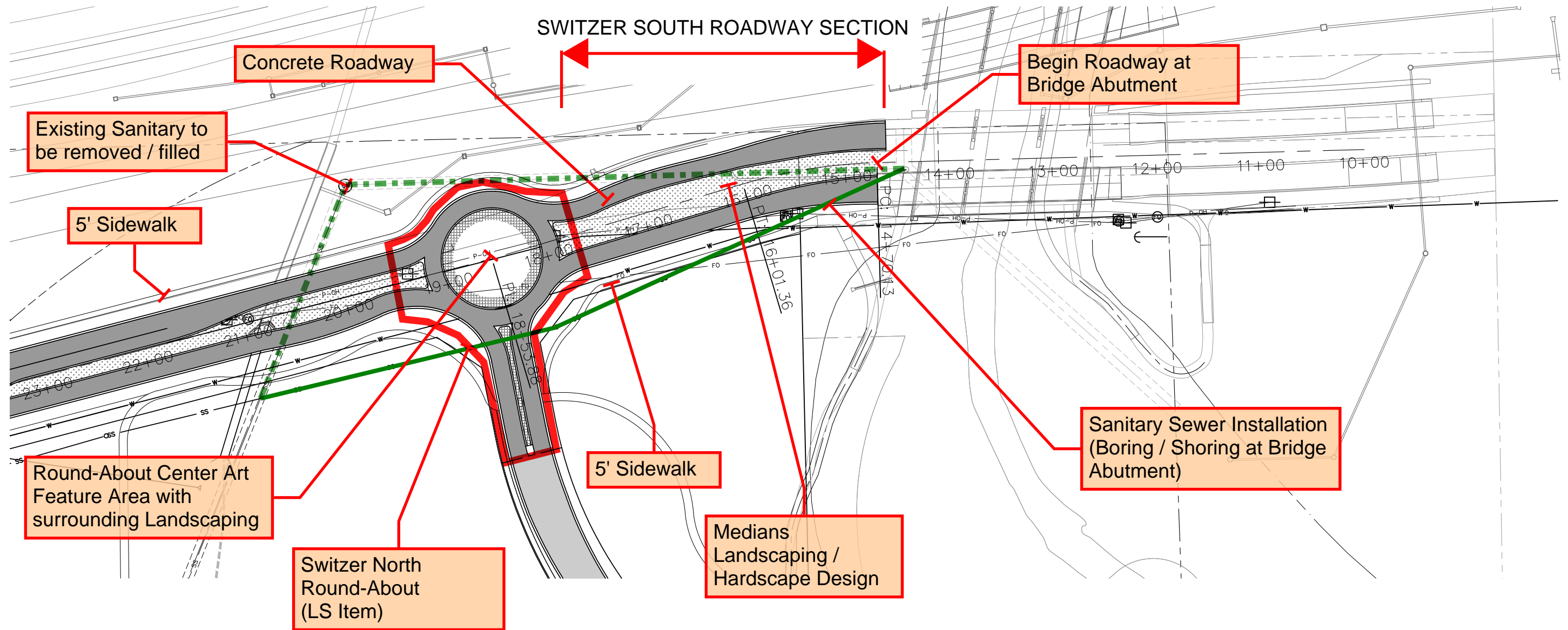
EXHIBIT
2



PROJECT NO: 013-2212
DRAWN BY: JLP
DATE: 01/10/2014

CITY PLACE - COST ESTIMATE EXHIBIT
MIDDLE SWITZER ROAD SECTION

	7301 West 133rd Street Suite 200 Overland Park, KS 66213-4750 TEL 913.381.1170 FAX 913.381.1174	EXHIBIT
		3



TYPICAL SECTION - SWITZER RD.
 STA 14+65 - 17+70
 NOT TO SCALE

PROJECT NO: 013-2212
 DRAWN BY: JLP
 DATE: 01/10/2014

CITY PLACE - COST ESTIMATE EXHIBIT
 SOUTH ROUND-ABOUT & SOUTH SWITZER ROAD SECTION

MOLSSON ASSOCIATES
 7301 West 133rd Street
 Suite 200
 Overland Park, KS 66213-4750
 TEL 913.381.1170
 FAX 913.381.1174

EXHIBIT
 4

EXHIBIT M

CONSTRUCTION MANAGEMENT SERVICES AND DUTIES

ARTICLE 1 - RELATIONSHIP OF THE PARTIES

1.1 The City and Developer.

1.1.1 Relationship. The Developer shall be the City's representative in providing the Developer's services described in this Agreement. In performing its services under this Agreement, the Developer is an independent contractor and is not an agent of, an employee of, or a joint venturer with, the City. The Developer shall act on behalf of the City only to the extent authorized by the terms of this Agreement or as the City may from time to time otherwise expressly authorize the Developer in writing.

1.1.2 Standard of Care. The Developer covenants that it will furnish its services hereunder properly, in accordance with the highest professional skill and care for the services being performed hereunder, and in accordance with applicable federal, state and local laws and regulations which are in effect on the date such services are performed.

1.2 The City and the Contractors. The Client intends to enter into a separate contract with one or more contractors (each a "Contractor" and collectively the "Contractors") for the construction of the Project.

ARTICLE 2 – DEVELOPER'S SERVICES

2.1 General. In addition to the Developer's obligations elsewhere in this Agreement, the Developer shall perform the services relating to the Switzer Road Improvements described in this Article 2 of this **Exhibit M** to the Agreement (the "Developer's Services"). As a general matter, the Developer shall act as the City's representative during the selection, design, construction of and relocation to the Switzer Road Improvements to coordinate and manage the selection process, the design process, the construction process, the relocation process and all other aspects of the Switzer Road Improvements consistent with the City's schedule, budget and other objectives. Accordingly, the Developer will assist the City in achieving deliveries to the City of each component of the Switzer Road Improvements on time and on budget within the scope of services provided for in this Agreement. All of the Developer's Services will be performed by the Developer in an effective, expeditious and economical manner to further the interest of the City in connection with the Switzer Road Improvements.

2.2 Developer's Specific Duties and Responsibilities. Without limiting the generality of this Agreement, with respect to the Switzer Road Improvements, the Developer shall, as part of Developer's Services:

2.2.1 Assist the City in the planning and evaluation of the Switzer Road Improvements by working with the City and the Engineer to (a) develop requirements for and limitations on the Switzer Road Improvements which satisfy the City's objectives, budget, team structure, schedule, constraints and criteria (including, without limitation, space requirements and relationships, flexibility, expandability, special equipment, system and site requirements) and any applicable requirements of the City's lease, (b) develop and maintain an overall budget for the Switzer Road Improvements (which includes all hard and soft design, construction, equipment and

EXHIBIT M

other development costs as well as reasonable contingencies related to all aspects of these costs) and (c) develop and maintain an overall schedule for the Switzer Road Improvements.

2.2.2 Assist in the implementation of the Switzer Road Improvements by (a) establishing materials and systems to be used in the construction program (including analysis of competing systems to determine the most economical and practical consistent with proposed image and use), (b) identifying any long lead items which jeopardize the proposed schedule and recommend pre-ordering of such items in advance of the construction, (c) assisting the design team in preparing packages for permit applications, (d) reviewing furniture, fixture and equipment alternatives and assist in ordering requirements with the Engineer, (e) conducting design reviews with the design team and the City to assure timely information flow and consistency with expectations, (f) submitting an estimate for the total cost of the Switzer Road Improvements, (g) reviewing final design plans for bidding, and (h) reviewing and advising the City with respect to disposition and processing of invoices and payment requisitions by the Engineer or other consultants engaged by the City for the Switzer Road Improvements.

2.2.3 Assist Engineer and any other contractors in securing all permits and approvals required for the Switzer Road Improvements.

2.2.4 Assist in the selection of consultants and contractors (including without limitation design and construction firms) by (a) identifying a select list of qualified vendors for competitive bidding or negotiated proposals, as determined by the City, and (b) analyzing bids and/or proposals and recommending contractors to be awarded contracts. Negotiate all primary design, construction, furniture or specialty contracts.

2.2.5 Prior to the start of construction, work with the City, the Engineer and any contractors to establish and clarify all aspects of correspondence, record keeping, budgets, administration, reporting and accounting procedures.

2.2.6 Perform on-site observations of the progress and quality of the Switzer Road Improvements as may be reasonably necessary at each stage of construction to determine in general if the Switzer Road Improvements are being performed in accordance with the Contract Documents. Notify the Engineer and the City immediately if, in the Developer's opinion, the Switzer Road Improvements do not conform to the Contract Documents or require special inspection or testing.

2.2.7 Monitor the construction schedule on an ongoing basis and immediately report to the City and the Engineer conditions that may lead to delays in completion of the Switzer Road Improvements. Coordinate City-furnished items with the construction schedule and any contractors.

2.2.8 Coordinate the Engineer's review and consideration of suggestions, recommendations and requests from any contractors, including requests for change orders, and submit them, together with the Developer's recommendations thereon, to the City for final decision.

2.2.9 Administer all team members in consideration of value engineering alternatives.

2.2.10 Assist the contractors and Engineer in arranging for tests required by the Contract Documents. Report to the City on test procedures and, where applicable, test results. Verify testing invoices to be paid by the City.

EXHIBIT M

2.2.11 Cause the contractors to maintain a diary or log book recording activities relating to the Switzer Road Improvements and activities at the site, including (a) daily weather conditions, (b) description (including nature and locations(s)) of the activities and the work performed by the Contractor and each subcontractor relating to the Switzer Road Improvements, (c) subcontractors working on site and the number of workers representing each subcontractor (and, to the extent applicable, number of workers representing the contractor for any trade work performed by the contractor), (d) materials and equipment received, (e) verbal instructions and/or interpretations given to the contractors, (f) description of any problems encountered by the contractors or any subcontractor and the resolution or direction set for resolution of such problems, (g) delays or potential delays, including specific description of contributing causes, to the Switzer Road Improvements (h) special occurrences, (i) accidents, (j) specific observations and any occurrence which might result in a claim for a change in the cost of the Switzer Road Improvements or the construction schedule thereto, and (k) other significant Switzer Road Improvements related information. Obtain copies of the log periodically (no less frequently than monthly) and upon completion of the Switzer Road Improvements.

2.2.12 Concurrent with the Engineer's review of requests for payment, Developer will independently review such requests for payment submitted by the contractors and with the concurrence of the Engineer, forward to the City with recommendations for disposition. With each request for payment forwarded to the City with a recommendation for payment, the Developer shall include a report in form and substance satisfactory to the City (a "Payment Report") which shows (a) all suppliers who have provided supplies and/or materials to the Switzer Road Improvements and subcontractors with whom the contractors have entered into subcontracts, (b) the amounts of each such supply agreement or subcontract, (c) the amount requested for any supplier or subcontractor in the request for payment, (d) that the Developer has received a duly executed payment acknowledgment and lien waiver instrument in the form(s) required by the Construction Contract or otherwise approved by the City in writing, from the contractor and all direct and lower tier subcontractors who were to receive funds from previous requests for payment paid by the City, completed in a manner which demonstrates that all funds owed to such parties were received and that such parties assert no rights to a lien for the Switzer Road Improvements, (e) the amount to be retained by the City from such progress payment and (f) all other direct vendors who have provided supplies, materials and/or services to the Switzer Road Improvements.

2.2.13 Review the list of items to be completed or corrected which is submitted by the contractors with a request for issuance of a Certificate of Substantial Completion.

2.2.14 Assist the Engineer in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion. Assist the Engineer in preparing or evaluating a punch-list of defective or nonconforming items prior to completion.

2.2.15 Receive from the Engineer and prepare for transmittal to the City the documentation the contractors are required to furnish at the completion of the Switzer Road Improvements.

2.2.16 Assist in procuring all final inspections, permits and approvals (including, without limitation, certificates of occupancy).

2.2.17 The Developer shall assist the contractors to (a) make reasonable efforts to confirm that no subcontractor, supplier or other party for whom a contractor is responsible establishes a lien against the Switzer Road Improvements and (b) to the extent that any

EXHIBIT M

subcontractor, supplier or other party for whom a contractor is responsible establishes a lien against the Switzer Road Improvements, the Developer shall (i) promptly advise the City in writing and (ii) enforce the contractor's obligation to cause the lien to be discharged.

ARTICLE 3 - LIMITATIONS OF AUTHORITY

3.1 The Developer, in acting on behalf of the City, shall not exceed the authority expressly set forth in this Agreement. Without limiting the generality of the foregoing, the Developer shall not:

3.1.1 Authorize deviations from the Contract Documents.

3.1.2 Approve substitute materials, finishes or equipment except as authorized in writing by the City.

3.1.3 Personally conduct or participate in tests or third party inspections except as authorized in writing by the City.

3.1.4 Assume any of the responsibilities of the Engineer, any contractor's superintendent or of any subcontractors.

3.1.5 Advise on or issue directions concerning aspects of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Switzer Road Improvements.

3.1.6 Reject Work or require special inspection or testing.

3.1.7 Order the Engineer, any contractors or any other party to stop or suspend services on the Switzer Road Improvements or any portion thereof.

EXHIBIT M

EXHIBIT N

FORM OF ASSUMPTION AND ACKNOWLEDGEMENT

EXHIBIT N

EXHIBIT O
CID PROJECT COSTS

EXHIBIT O

City Place, Overland Park, KS

Rough Order of Magnitude of Total Cost**

3-Feb-14

CID Infrastructure Related Costs**

(Public Infrastructure excluding Switzer Road Related Costs)

Item	Unit	Quantity	Unit Cost	Total**	Notes
General Conditions & Mobilization	LS	1	\$ 119,000	\$ 119,000	3.5% Cost Calculation / Trailer, Hookups, Mobilization, & GC
Traffic Control	LS	1	\$ 20,000	\$ 20,000	
Clearing & Grubbing	AC	20	\$ 4,500	\$ 90,000	
Erosion Control	LS	1	\$ 35,000	\$ 35,000	
Earthwork / Backfill / Finish Grading					
Soil Excavation - Roadway	CY	1,954	\$ 5.00	\$ 9,770	
Soil Excavation - BMP / Channel	CY	62,339	\$ 7.50	\$ 467,539	
Rock Excavation (5%)	CY	1,956	\$ 150.00	\$ 293,468	5% base for Stream and BMP Excavation
Soil Fill - Roadway	CY	7,680	\$ 2.00	\$ 15,360	
Soil Fill - BMP / Channel / Ex. Pond	CY	35,104	\$ 3.00	\$ 105,312	
113th St & Indian Creek Roadways					
				<i>--> Roadway Section Cost per Foot Average = \$446</i>	
Fly Ash & 6" Subgrade Manipulation	SY	7,560	\$ 8	\$ 60,480	
Asphaltic Concrete (2" Surface Course)	TON	675	\$ 75.0	\$ 50,625	
Asphaltic Concrete (8" Intermediate Course)	TON	2,700	\$ 70.0	\$ 189,000	
Curb & Gutter	LF	3,319	\$ 15	\$ 49,785	
Roadway Lighting	LF	1,660	\$ 54	\$ 89,640	Estimated Light Structure @ ave. 150 ft Spacing plus conduit / wire
Roadway Striping	LF	3,320	\$ 1.25	\$ 4,150	
Roadway Storm System (113th St)	LF	1,130	\$ 221	\$ 249,730	Extension of off site water, Est 5 Structures & 1130 LF of 48"
Roadway Storm System (Indian Creek)	LS	225	\$ 148	\$ 33,300	Est. 2 Structures, 2 FES & 225 LF of 30" Pipe
Roadway Corridor Landscaping	LF	1,660	\$ 50	\$ 83,000	Sod & Trees within ROW
Sidewalk Ramps w/ Detectable Warning Surfaces	EA	18	\$ 1,500	\$ 27,000	
Utility Sleeve Locations	EA	4	\$ 2,000	\$ 8,000	
113th St & Nieman Roadway Updates					
113th St & Indian Creek Sidewalk (4" Concrete)	SF	12,915	\$ 4	\$ 51,660	5 ft wide public sidewalk (Typ Section)
College Blvd Sidewalk	SF	8,460	\$ 4	\$ 33,840	5 ft wide public sidewalk
Neiman Roadway Sidewalk	SF	6,670	\$ 4	\$ 26,680	
Public Trail Corridor System (4" Asphalt Intermediate Course & AB3 Base)	TON	590	\$ 95	\$ 56,060	8 ft wide public asphalt trail along stream corridor
Conservation Easement / Corridor & BMP Landscaping					
BMP Basins	LS	1	\$ 97,500.00	\$ 97,500	Basin, plantings, and outlet structure
Streamway Corridor	LS	1	\$ 250,000.00	\$ 250,000	Includes rock riffle areas and bank protection

City Place, Overland Park, KS

Rough Order of Magnitude of Total Cost**

3-Feb-14

CID Infrastructure Related Costs**

(Public Infrastructure excluding Switzer Road Related Costs)

Item	Unit	Quantity	Unit Cost	Total**	Notes
Sanitary					
Sanitary Main Installation	LF	3,610	\$ 75	\$ 270,750	Rock quantity unknown but likely to be encountered
Sanitary MH's	EA	14	\$ 6,000	\$ 84,000	Average Vertical Height = 12 ft
Sanitary Demo / Fill	LF	2,800	\$ 12	\$ 33,600	Removal of manholes and fill line with flowable fill
Sanitary By-Pass pumping	LS	1	\$ 25,000	\$ 25,000	Split cost with Switzer Sewer relocation
Water Main					
Water Main Extension	LF	5,525	\$ 45	\$ 248,625	Main from College to South Switzer tie-in point and along 113th
Hydrant Assemblies	EA	14	\$ 3,500	\$ 48,344	
Indian Creek Crossing	EA	1	\$ 40,000	\$ 40,000	Include Encasement, scour protection, and dewatering
College Blvd Boring	LF	120	\$ 400	\$ 48,000	
Niemen Rd Boring	LF	60	\$ 400	\$ 24,000	
Power Infrastructure					
Power Infrastructure	LF	1,055	\$ 75	\$ 79,125	Under Ground Infrastructure Relocation along new 113th ROW corridor
Development Entrance Monuments	EA	2	\$ 50,000	\$ 100,000	Entrance monuments at Switzer & College Intersection
CONSTRUCTION SUB-TOTAL				\$ 3,532,342	
Contingency				\$ 341,300	10% Contingency on Construction Costs
Mitigation Costs				\$ 364,900	
Survey for Roadway Design, As-built Survey & Pre-Design Services				\$ 34,100	1% of Construction Cost
Architectural Monument & Landscaping Design				\$ 30,000	
Engineering Costs (Design & Construction Phase)				\$ 213,300	6.25% of Construction Cost
Streamway Design Peer Review				\$ 35,000	Streamway Corridor Geomorphologic Peer Review
<i>Construction Management***</i>				\$ 85,300	<i>2.5% of Construction Cost</i>
Geotechnical Investigation				\$ 51,200	1.5% of Construction Cost
Construction Inspection & Testing				\$ 204,800	6% of Construction Cost
Construction Survey Staking				\$ 42,700	1.25% of Construction Cost
Construction Bond Estimate				\$ 68,300	2% of Construction Cost
<i>Legal Fees***</i>				\$ 75,000	
Bond Issuance / Capital Carry Cost				\$ 953,186	7% plus 2 yrs capital carry @5.5%
CID INFRASTRUCTURE COST TOTAL				\$ 6,031,428	

* Percentage (%) Construction Cost calculations do not include a % of the GC/Moblizations Cost

** Construction cost is based on preliminary engineering layout and subject to change during final design. Cost is intended to quantify rough order of magnitude for the public infrastructure and does not include utility main extensions within the individual properties or mass grading of the entire parcel. Soft costs are formulated with simultaneous design and construction of the Switzer Road Project and the CID project. Construction cost does not include permitting fees such as flood plain permit, FEMA CLOMAR and LOMAR.

*** Construction Management and Legal Fees will not be reimbursed with CID funds.

EXHIBIT P
TDD PROJECT COSTS

EXHIBIT P

College / Switzer Development					
Rough Order of Magnitude of Total Cost					12-Nov-13
<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total</u>	<u>Notes</u>
TDD Parking Garage* Related Costs					
Garage Structure	Stalls	358	\$ 16,500	\$ 5,900,000	<i>Costs include structure, access-control, life safety, and traffic control</i>
Design and Engineering Fees				\$ 350,000	
Inspection and Permitting Fees				\$ 295,000	
Construction Management Fee				\$ 110,000	
Contingency				\$ 236,000	
Construction Period Interest				\$ 270,000	<i>Assumes 17 month construction period at 6% rate</i>
Other Infrastructure Cost Total				\$ 7,160,000	

* Reimbursement is limited to costs associated with the MXD Residential Mixed Use structured parking facility as contemplated herein.

EXHIBIT Q
SWITZER IMPROVEMENT COSTS

EXHIBIT Q

City Place, Overland Park, KS

Rough Order of Magnitude of Total Cost*

3-Feb-14

College / Switzer Intersection & Switzer Roadway Construction

<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total*</u>	<u>Notes</u>
General Conditions & Mobilization	LS	1	\$ 214,000	\$ 214,000	3.5% Cost Calculation / Trailer, Hookups, Mobilization, & GC
Traffic Control	LS	1	\$ 40,000	\$ 40,000	
Clearing & Grubbing	AC	16	\$ 4,500	\$ 72,000	
Erosion Control	LS	1	\$ 25,000	\$ 25,000	
Switzer Corridor Earthwork / Backfill / Finish Grading					
Soil Excavation	CY	38,562	\$ 5	\$ 192,812	Earthwork is without a compaction factor. Surface line is based at subgrade datum and does not include pavement thicknesses
Rock Excavation (5%)	CY	2,030	\$ 150	\$ 304,440	
Switzer Corridor Fill	CY	12,938	\$ 2	\$ 25,876	
Switzer Export Estimate	CY	23,037	\$ 15	\$ 345,552	Assume 80% compaction factor for onsite quantity
College / Switzer Intersection					
Dual Left Turn Lanes	EA	1	\$ 325,000	\$ 325,000	Median modification and asphalt turn bays
College / Switzer Signal Light	LS	1	\$ 250,000	\$ 250,000	
Utility Relocations along College	LS	1	\$ 50,000	\$ 50,000	Lighting, OH Power, Fiber Optic
Switzer Roadway - North Section Sta 40+15 to 48+15					
				<i>--> Roadway Section Cost per Foot Average = \$1,198</i>	
Fly Ash & 8" Subgrade Manipulation	SY	7,860	\$ 10	\$ 78,600	
6" Aggregate Base	TON	2,476	\$ 25	\$ 61,898	
Roadway Concrete Surfacing (9")	SY	7,000	\$ 58	\$ 406,000	
Curb & Gutter - Roadway	LF	1,620	\$ 15	\$ 24,300	
Curb & Gutter - Median	LF	1,520	\$ 40	\$ 60,800	Includes curb underdrains
Median Treatment	SY	840	\$ 68	\$ 57,120	Brick Nose Hardscape (Majority), Landscaping (Trees / Shrubry), & Median Irrigation
Switzer Roadway - Middle Section Sta 19+40 to 37+15					
				<i>--> Roadway Section Cost per Foot Average = \$934</i>	
Fly Ash & 8" Subgrade Manipulation	SY	14,941	\$ 10	\$ 149,410	
6" Aggregate Base	TON	4,706	\$ 25	\$ 117,660	
Roadway Concrete Surfacing (9")	SY	9,256	\$ 58	\$ 536,848	
Curb & Gutter - Roadway	LF	3,546	\$ 15	\$ 53,190	
Curb & Gutter - Median	LF	3,065	\$ 40	\$ 122,600	Includes curb underdrains
Median Treatment	SY	2,324	\$ 35	\$ 81,340	Brick Nose Hardscape, Landscaping Majority (Trees / Shrubry), & Median Irrigation
Switzer Roadway - South Section Sta 14+65 to 17+70					
				<i>--> Roadway Section Cost per Foot Average = \$992</i>	
Fly Ash & 8" Subgrade Manipulation	SY	2,675	\$ 10	\$ 26,750	
6" Aggregate Base	TON	843	\$ 25	\$ 21,066	
Roadway Concrete Surfacing (9")	SY	1,185	\$ 58	\$ 68,730	
Curb & Gutter - Roadway	LF	620	\$ 15	\$ 9,300	
Curb & Gutter - Median	LF	610	\$ 40	\$ 24,400	Includes curb underdrains

City Place, Overland Park, KS

Rough Order of Magnitude of Total Cost*

3-Feb-14

College / Switzer Intersection & Switzer Roadway Construction

<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total*</u>	<u>Notes</u>
Median Treatment	SY	995	\$ 35	\$ 34,825	Brick Nose Hardscape, Landscaping Majority (Trees / Shrubry), & Median Irrigation
Switzer North Round-About					
<i>--> Unit prices increased 25% over above used standard Roadway prices to account for Round-About pricing</i>					
Fly Ash & 8" Subgrade Manipulation	SY	5,940	\$ 13	\$ 74,250	
6" Aggregate Base	TON	1,871	\$ 31	\$ 58,472	
Roadway Concrete Surfacing (9")	SY	3,425	\$ 73	\$ 248,313	Include additional cost for Round-About constructability
Curb & Gutter (All)	LF	2,115	\$ 50	\$ 105,750	Hand Formed & Underdrains
Median Treatment	SY	2,280	\$ 85	\$ 193,800	Brick Nose Hardscape (Majority), Landscaping (Trees / Shrubry), & Median Irrigation
Round-About Signature Artwork / Feature	LS	1	\$ 100,000	\$ 100,000	
Switzer South Round-About					
<i>--> Unit prices increased 25% over above used standard Roadway prices to account for Round-About pricing</i>					
Fly Ash & 8" Subgrade Manipulation	SY	2,710	\$ 13	\$ 33,875	
6" Aggregate Base	TON	854	\$ 31	\$ 26,677	
Roadway Concrete Surfacing (9")	SY	1,345	\$ 73	\$ 97,513	Include additional cost for Round-About constructability
Curb & Gutter (All)	LF	1,015	\$ 50	\$ 50,750	Hand Formed & Underdrains
Median Treatment	SY	1,040	\$ 85	\$ 88,400	Hardscape and Landscaping
Round-About Signature Artwork / Feature	LS	1	\$ 100,000	\$ 100,000	
Switzer Roadway Additional Items					
Roadway Lighting	LF	3,350	\$ 54	\$ 180,900	Estimated Light Structure @ ave. 150 ft Spacing plus conduit / wire
Roadway Striping	LF	8,375	\$ 1.50	\$ 12,563	
Roadway Storm System	LF	3,350	\$ 126	\$ 422,100	Est. 19 Structures and 3290 LF of 30" Pipe
Roadway Corridor Landscaping	LF	3,350	\$ 50	\$ 167,500	Sod & Trees within outside ROW
Roadway Sidewalk (4" Concrete)	SF	26,982	\$ 4	\$ 107,928	5 ft wide public sidewalk on both sides
Sidewalk Ramps w/ Detectable Warning Surfaces	EA	39	\$ 1,500	\$ 58,500	
Utility Sleeve Locations	EA	8	\$ 4,000	\$ 32,000	
Existing Switzer Reconfiguration (South of Indian Creek Bridge - Sta 14+65 and SOUTH)	LS	1	\$ 20,000	\$ 20,000	Item to cover re-striping of existing Switzer and new roadway signage. Does not account for any Mill & Overlay work if required by City
Switzer Roadway Demolition	LF	2,460	\$ 25	\$ 61,500	Removal of existing Switzer Roadway & localized grading to ensure drainage (Limits of demo include from Indian Crk Bridge to College Blvd)
Hwy 69 Culvert Extension					
Existing Headwall / RCB Removal	LS	1	\$ 15,000	\$ 15,000	
8'x4' RCB Extension	LF	140	\$ 700	\$ 98,000	Require CIP at Tie-In section
8'x4' End Section	EA	1	\$ 25,000	\$ 25,000	Included CIP Wall, Railing, & Granular Backfill

City Place, Overland Park, KS

Rough Order of Magnitude of Total Cost*

3-Feb-14

College / Switzer Intersection & Switzer Roadway Construction

<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total*</u>	<u>Notes</u>
Sanitary					
Sanitary Demo / Fill	LF	760	\$ 12	\$ 9,120	Removal of manholes and fill line with flowable fill
Sanitary Main Installation	LF	650	\$ 75	\$ 48,750	Rock quantity unknown but likely to be encountered
Sanitary MH's	EA	1	\$ 6,000	\$ 6,000	Average Vertical Height = 10 - 12 ft
Sanitary Open Cut or Boring Tie in at Indian Creek Main	LF	140	\$ 650	\$ 91,000	Open cut with possible boring combination to tie into existing manhole between bridge abutments. Includes Shoring at excavation. Rock expected.
Sanitary By-Pass pumping	LS	1	\$ 25,000	\$ 25,000	Split cost with TDD Sanitary Relocation Pumping
CONSTRUCTION SUB-TOTAL				\$ 6,338,175	
Contingency					
Mitigation Costs				\$ 612,400	Contingency on Construction Costs Only (10%)
Survey for Roadway Design, As-built Survey & Pre-Design Services				\$ 104,450	
Engineering Costs (Design & Construction Phase)				\$ 60,800	1% of Construction Cost
Round-About Pier Review				\$ 382,800	6.25% of Cost
Construction Management **				\$ 35,000	Round-About Peer Review
Geotechnical Investigation				\$ 153,100	2.5% of Cost
Construction Inspection & Testing				\$ 91,300	1.5% of Construction Cost
Construction Survey Staking				\$ 365,100	6% of Construction Cost
Construction Bond Estimate				\$ 76,100	1.25% of Construction Cost
SWITZER ROADWAY TOTAL				\$ 126,800	2% of Cost
				\$ 8,346,025	

* Construction cost is based on preliminary engineering layout and subject to change during final design. Cost is intended to quantify rough order of magnitude for the public infrastructure and does not include utility main extensions within the individual properties or mass grading of the entire parcel. Construction cost does not include permitting fees such as flood plain permit, FEMA CLOMAR and LOMAR.

** Construction management fees will not be reimbursed to College 69, Associates, LLC or affiliates associated with the development group. To the extent the City contracts with an independent entity to review construction of the Project,

SEE ALSO EXHIBIT L FOR SWITZER IMPROVEMENTS DRAWINGS

EXHIBIT R

TRAILS

EXHIBIT R



- CONNECTIVITY LEGEND**
- Connective Accessibility Path
 - New Connective Sidewalk
 - Proposed New Trail Connection
 - Existing Trail Connection

PRESENTED BY:

BLOCK

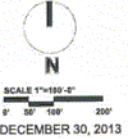
REAL ESTATE SERVICES, LLC

IN A PARTNERSHIP WITH:

NSPJ
ARCHITECTS

W HOEFER WYSOCKI
Architecture

OLSSON
ASSOCIATES



CITY PLACE
REZONING/PRELIMINARY DEVELOPMENT PLAN - SOUTH SITE CONNECTIVITY

COLLEGE BLVD. & U.S. HWY 69 SITE - OVERLAND PARK, KANSAS

EXHIBIT S

FORM OF CERTIFICATE OF EXPENDITURE

**CERTIFICATION OF EXPENDITURES
CITY PLACE TDD IMPROVEMENTS**

Date: _____

Certification # _____

Governing Body of the

City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 20__ (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and [_____] (the "Developer"), Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to 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 Developer pursuant to the Agreement.
2. All amounts have been advanced by Developer, successors, assigns, tenants, or transferees for CID/TDD Project 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.

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 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 Developer who signed this Certificate.

Approved:

By:

Its

City's Representative

EXHIBIT S

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 S