

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2015, between 95Metcalf Properties, Inc., (the "Applicant"), and the City of Overland Park, Kansas (the "City").

RECITALS

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by certain statutory provisions to provide financial incentives for qualified development projects.
- B. The Applicant is a Kansas corporation and is the owner of certain real property generally located at the intersection of 95th Street and Metcalf Avenue within the City, as more particularly set on Exhibit A attached hereto (the "Site").
- C. The Applicant has requested that the City review and analyze Applicant's request (the "Request") to consider the use of certain financial incentives for economic development projects on the Site.
- D. In order to grant the Applicant's Request, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, and the City requires that the Applicant pay and reimburse the City for the payment of such reasonably incurred costs. The City therefore requires that the Applicant deposit funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Request and engage consultants as needed for such evaluation and to provide services described in **Section 2** of this Agreement. If the Request is approved, the City will continue to incur similar costs and expenses to represent the City's interests in documenting and implementing the various aspects of the Request, and other related tasks, documents and issues.
- E. By execution of this Agreement, the Applicant is asking the City to retain outside counsel and consultants in order to evaluate, consider and, if approved, to implement the Request. The Applicant agrees, represents and warrants that any information provided to the City in its evaluation of the Request shall be accurate and complete to the best knowledge of the Applicant's representative providing such information.

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

1. **Recitals.**

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

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

The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, subject to the provisions of Section 4, below, deems necessary to:

(a) Consider the Applicant's Request for use of economic development incentive tools permitted by Kansas Statute ("Incentives"), including but not limited to, tax increment financing.

(b) If approved by the Governing Body, permit the use of any of the requested Incentives for the project at the Site; establish the appropriate districts; give all appropriate notices; make all publications; prepare or review any relevant plans, studies and/or analyses necessary or appropriate in connection with the establishment of the districts and/or use of the Incentives; hold all hearings; prepare the required resolutions and ordinances; and take any further action required to comply with the Kansas Statutes.

(b) If approved by the Governing Body, prepare and negotiate a development agreement between the parties for use of any Incentives at the project Site.

(d) If approved by the Governing Body, implement the various aspects of the Request.

The Applicant acknowledges that, in this case, at its request the City has retained outside counsel and incurred expenses prior to the execution of this Funding Agreement. Applicant agrees to pay the City for all the fees and expenses incurred.

3. **Payment.**

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

(a) In order to ensure the prompt and timely payment of the Charges, the Applicant shall establish a fund (the "Fund") by paying the initial amount of Thirty-Five Thousand and 00/100 dollars (\$35,000.00) to the City contemporaneous with the execution of this Agreement. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Applicant on a monthly basis. If, in the judgment of the City, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred over the next sixty (60) days, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City is required to provide sufficient funds to pay the projected Charges.

(b) If the amount in the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within twenty (20) days of receipt

of a statement from the City of the amount required to pay such Charges. All statements shall be reasonably itemized. If the Charges are not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(c) The City's special counsel, Stinson Leonard Street, LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder. The City's Bond Counsel, Kutak Rock LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder, other than for legal services rendered in connection with the issuance of any bonds that may be issued to finance the Incentives.

(d) Nothing in this section shall be construed to make any payments made hereunder ineligible to be reimbursed out of Incentive funds if such reimbursement is otherwise permissible based on the City's interpretation of the applicable statute.

4. Studies and Plans.

The City and the Applicant agree that the City will retained an entity to be agreed upon by the parties to prepare any necessary studies and/or plans referenced in **Section 2**, above. The City and the Applicant further agree that a consultant may be retained as appropriate to provide supporting materials for any study and/or plan. The Applicant agrees to pay the cost of the study and/or plan in full, including the fees and expenses of the provider thereof and of any other firm or entity which provides supporting materials for the study and/or plan.

5. Termination.

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

(b) The Applicant may terminate this Agreement at any time in the event it determines not to continue to pursue the Incentives upon written notice to the City thereof.

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

6. No obligation to proceed.

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to grant any establishing portion of the Request and any and all actions are subject to

the sole discretion of the Governing Body of the City and the requirements of the applicable statutes.

Specifically, the Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish any districts or approve any studies or plans and acknowledges that the establishment of any districts and the approval of any studies or plans are subject to the sole discretion of the Governing Body of the City and the requirements of the applicable statute(s).

7. Notice.

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

To the City:

Kristy Stallings
Deputy City Manager
City of Overland Park, Kansas
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212

And

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

With a copy to:

Todd LaSala
Stinson Leonard Street LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106

And

Dorothea Riley
Kutak Rock LLP
Two Pershing Square
2300 Main Street, Suite 800
Kansas City, Missouri 64106-2220

To the Applicant:

95Metcalf Properties, Inc.
4705 Central Street
Kansas City, MO 64112

With a copy to:

Chase Simmons
Polsinelli
900 W. 48th Place Suite 900
Kansas City, Missouri 64112

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

7. Governing Law.

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

(Signatures on following page)

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

95METCALF PROPERTIES, INC.

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ___ day of _____, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of **95Metcalf Properties, Inc.**, a Kansas corporation duly organized and existing under and by virtue of the laws of Kansas; who is personally known to me to be _____ and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

MY APPOINTMENT EXPIRES:

Notary Public
Printed Name: _____

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

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM:

By: _____
Tammy M. Owens
Deputy City Attorney

EXHIBIT A

The Site

Legal Description

DISTRICT LEGAL DESCRIPTION

All that part of the Northwest 1/4 of the Northwest 1/4 of Section 5, Township 13 North, Range 25 West, all in the City of Overland Park, Johnson County, Kansas and being more particularly described as follows:

Commencing at the Northwest corner of said Northwest 1/4; thence North 87°34'11" East along the North line of said Northwest 1/4, a distance of 100.00 feet, said point being the Point of Beginning; thence South 02°25'38" East, along said East right of way line, a distance of 1171.00 feet; thence North 87°51'10" East, a distance of 1222.58 feet, to a point on the East line of said Northwest 1/4; thence North 02°23'05" West along the East line of said Northwest 1/4, a distance of 1122.04 feet, to a point on the South right of way line of 95th Street; thence South 87° 34' 11" West, a distance 25.35 feet; thence North 02°04'15" West, a distance of 1295.31 feet, to a point on the South right of way line of 93rd Street; thence South 87°35'06" West, along said South right of way line, a distance of 1199.54 feet to a point on the East right of way of Metcalf Avenue; thence South 02°07'20" East, along said East right of way line, a distance of 1240.62, returning to the Point of Beginning.

The above described tract contains 67.07 acres, more or less and is subject to all easements, restrictions, reservations, covenants, conditions and right of ways, recorded or unrecorded, if any.