

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2015, between Arbor Development, LLC, (the "Applicant"), and the City of Overland Park, Kansas (the "City").

RECITALS

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by certain statutory provisions to provide financial incentives for qualified development projects.
- B. The Applicant is a Missouri limited liability company and is an entity related to the owner of certain real property generally located at the northeast corner of 91st 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 manager or member of the Applicant providing such information.

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

1. **Recitals.**

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

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

The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

(a) Consider the Applicant's Request for use of economic development incentive tools permitted by Kansas Statute ("Incentives"), including but not limited to tax increment financing, community improvement district, economic development revenue bonds and any other incentive or public assistance.

(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 and shall be payable within twenty (20) days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(c) The City's special counsel, Stinson 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 retain 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 64108

To the Applicant:

Arbor Development, LLC
3007 Frederick Avenue
St. Joseph, MO 64506

With a copy to:

John Petersen
Polsinelli PC
6201 College Blvd., Ste. 500
Overland Park, KS 66221

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.

ARBOR DEVELOPMENT, LLC

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 **ARBOR DEVELOPMENT, LLC**, a Missouri limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

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

A parcel of land being a part of Lots 1, 3 and 4, Block's Plaza, a subdivision of land now in the City of Overland Park, Johnson County, Kansas, according to the plat of Block's Plaza as recorded in Plat Book 49 at Page 46 in the Office of the Register of Deeds of Johnson County, Kansas, being a part of the Southwest Quarter of the Northwest Quarter of Section 32, Township 12 South, Range 25 East, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

(Note: For orientation the bearings in this description are based on the East line of said Lot 3 having a bearing of South 02° 07' 22" East.)

Beginning at the Southeast corner of said Lot 3 monumented by a reinforcing rod;
Thence South 87° 36' 04" West, a distance of 385.55 feet on the South line of said Lot 1;
Thence North 88° 56' 59" West, a distance of 110.37 feet on the South line of said Lot 3;
Thence North 88° 55' 41" West, a distance of 22.46 feet on the South line of said Lot 1;
Thence South 87° 36' 04" West, a distance of 177.57 feet on the South line of said Lot 1;
Thence North 02° 07' 57" West, a distance of 297.00 feet on the West line of said Lot 1;
Thence North 87° 36' 04" East, a distance of 200.00 feet on the North line of said Lot 1;
Thence North 02° 07' 57" West, a distance of 300.00 feet on the West line of said Lot 3;
Thence South 87° 36' 04" West, a distance of 200.00 feet on the Southwesterly line of said Lot 3;
Thence North 02° 07' 57" West, a distance of 681.31 feet West line of said Lot 3;
Thence North 87° 32' 41" East, a distance of 225.74 feet on the North line of said Lot 3 to the beginning of a non-tangent curve concave to the Northeast having a radius of 280.00 feet;
Thence Southeasterly an arc length of 130.80 feet on said curve and continuing on said North line of said Lot 3, said curve having a chord bearing of South 79° 04' 21" East and a chord distance of 129.61 feet;
Thence North 87° 32' 41" East, a distance of 843.97 feet on the North line of said Lots 3 and 4;
Thence South 02° 07' 22" East, a distance of 567.48 feet on the East line of said Lot 4;

Thence South 87° 35' 05" West, a distance of 500.00 feet on the South line of said Lot 4;

Thence South 02° 07' 22" East, a distance of 690.00 feet on the East line of said Lot 3 to the point of beginning. Containing 1,104,071 square feet or 25.3460 acres. Subject to all easements and restrictions of record.

Less and except:

Commencing at the Southeast corner of said Lot 3 monumented by a reinforcing rod;
Thence North 26° 31' 57" West, a distance of 188.35 feet to the Point of Beginning;

Thence South 88° 00' 00" West, a distance of 178.04 feet;

Thence North 02° 00' 00" West, a distance of 175.20 feet;

Thence South 88° 00' 00" West, a distance of 20.00 feet;

Thence North 02° 00' 00" West, a distance of 131.33 feet;

Thence North 88° 00' 00" East, a distance of 149.33 feet;

Thence South 02° 00' 00" East, a distance of 91.17 feet;

Thence South 64° 21' 01" East, a distance of 30.50 feet;

Thence South 02° 00' 00" East, a distance of 26.01 feet;

Thence North 88° 00' 00" East, a distance of 20.98 feet;

Thence South 02° 00' 00" East, a distance of 88.33 feet;

Thence South 65° 26' 06" East, a distance of 17.89 feet;

Thence South 02° 00' 00" East, a distance of 10.00 feet;

Thence South 88° 00' 00" West, a distance of 15.33 feet;

Thence South 02° 02' 11" East, a distance of 68.86 feet to the Point of Beginning. Containing 51,845 square feet or 1.1902 acres. Subject to all easements and restrictions of record.