

TRANSFEEE ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT
(Senior Living Facility)

THIS TRANSFEEE ACKNOWLEDGEMENT, ASSUMPTION AND ESTOPPEL AGREEMENT (this “Agreement”), is made and entered into this ____ day of June, 2015 (the “Effective Date”) between and among the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”), **COLLEGE 69 ASSOCIATES, LLC**, a Kansas limited liability company (the “Developer”) and **CAVS OVERLAND PARK PROPERTY OWNER, LLC**, a Delaware limited liability company (“Transferee”).

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. City and Developer have entered into that certain City Place Development Agreement dated as of March 7, 2014, as amended (the “Development Agreement”) concerning development of the Project Site. Capitalized terms which are not otherwise defined herein shall have the meanings assigned to them in the Development Agreement and the Annex of Definitions attached thereto.

C. Article VI of the Development Agreement provides for assignment of the obligations, covenants, and agreements of the Developer under the Development Agreement to third parties. Developer has transferred certain obligations, covenants, and agreements to Transferee in accordance with Article VI with respect to the portion of the Project transferred by Developer to Transferee, more specifically described in **Exhibit B** attached hereto (the “Transferee Project”).

D. The parties desire to enter into this Agreement so that the Transferee shall acknowledge, assume and agree to perform those obligations, covenants and agreements of the Developer under the Development Agreement described herein, and as the same pertain to the design, construction, completion and operation of the Transferee 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:

1. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

2. Term of Agreement. This Agreement shall commence upon the Effective Date and shall terminate upon the expiration of the Development Agreement (the "Term").

3. General Acknowledgement and Assumption. Transferee hereby acknowledges, assumes and agrees to perform each and every obligation, covenant and agreement of the Developer under the Development Agreement, except as modified below, but only to the extent that the same shall pertain to the design, construction, completion and operation of the Transferee Project, each of which is hereby incorporated as though more fully set forth herein and Transferee hereby understands and agrees that the City may enforce the same directly against Transferee. Without limiting the generality of the foregoing, the parties hereby specifically agree that Transferee shall only be obligated to assume such obligations, covenants and agreements of the Developer expressly set forth in Section 4 of this Agreement immediately below.

4. Specific Acknowledgement and Assumption. Transferee specifically acknowledges, assumes and agrees to perform the following obligations, covenants and agreements set forth in the Development Agreement applicable only to the Transferee Project, as modified in certain instances below:

(a) All of the terms and conditions in Article I (Definitions and Rules of Construction).

(b) All of the terms and conditions in Section 2.04 (Relationship of the City and Developer), Section 2.06 (Indemnification), Section 2.07 (Insurance) and Section 2.08 (Non-Discrimination).

(c) All of the terms and conditions set forth in Article VII (Construction of Improvements), except as follows:

(i) Transferee shall not be subject to Section 7.02, but Transferee shall be obligated to commence construction within 365 days of closing on the purchase of the Transferee Project.

(ii) Transferee's Completion Date for the Transferee Project shall be December 31, 2017 (which date conforms to the Performance Milestones for the Transferee Project as set forth on Exhibit I of the Development Agreement, and subject to the Transferee's right to show cause as set forth in Section 2.05).

(d) Until such time as the Transferee Project is Substantially Completed, all of the terms and conditions set forth in Article VI (Assignment and Transfer), after which time Transferee shall not be subject to Article VI.

(e) All of the terms and conditions set forth in Sections 8.01 (Term), 8.02 (Use and Operation), 8.03 (Maintenance and Use), 8.04 (Compliance), 8.05 (Payment of

Taxes and Liens), 8.06 (Licenses and Permits), 8.07 (Damage Destruction or Condemnation), 8.08 (Access), and 8.11 (Power of the City).

(f) All of the terms and conditions set forth in Article IX (Default and Remedies).

(g) All of the terms and conditions set forth in Section 10.02 (Time of Essence) through Section 10.18 (Cash Basis and Budget Laws), inclusive. However, the parties hereby understand and agree that the notice address for the Transferee in Section 10.09 (Notice) shall be replaced with the following:

To the Transferee:
CAVS Overland Park Property Owner, LLC
161 N. Clark Street, Suite 4900
Chicago, IL 60601
Attn: Larry Work

With copies to:

Polsinelli PC
161 N. Clark Street, Suite 4200
Chicago, IL 60601
Attn: Patrick Elder

(h) All of the terms and conditions set forth in Section 4.6 (Economic Development Revenue Bonds), all as more particularly set forth in Section 8 of this Agreement below.

Each of the foregoing provisions is hereby incorporated by reference and Transferee hereby understands and agrees that the City may enforce the same against Transferee in connection with the Transferee Project only. Further, the parties understand and agree that if and to the extent the various exhibits attached to the Development Agreement are referenced in the obligations that are acknowledged and assumed by the Transferee, such exhibits are hereby incorporated by reference as though more fully set forth herein.

Notwithstanding anything set forth herein which is seemingly to the contrary, the City and Transferee hereby understand and agree that Transferee shall have no obligation to perform any of the Developer obligations under the following provisions, nor shall Transferee have any rights related to the following provisions:

(i) All of the terms and conditions set forth in Sections 2.01 (Development of the Project Site), Section 2.02 (Phasing of Improvements), and Section 2.05 (Project Timing – Milestones), except for and to the extent that Section 2.05 and the Performance Milestones pertain to the Transferee Project, and subject to the terms of Section 4(c)(ii) of this Agreement, above.

(ii) All of the terms and conditions set forth in Article III (Development and Construction of the Switzer Improvements).

(iii) All of the terms and conditions set forth in 2.03 (TDD and CID Improvements), Article IV (Financing), and Article V (Reimbursement), except for and to the extent that the City shall specifically consent to an assignment of all or a portion thereof to Transferee pursuant to the terms and conditions of Sections 4.06, 6.01 and Section 6.04(b) or 6.05(b), respectively.

(iv) All of the terms and conditions set forth in Section 8.09 (Civic and Community Participation) and 8.10 (Trails).

(v) All of the terms and conditions set forth in Section 10.01 (Expenses and Administrative Fee).

5. Future Impact of Developer Actions. The parties agree that no future act or omission of Developer in the exercise of its rights, duties, and obligations under the Development Agreement shall affect the Transferee's rights under this Agreement. Transferee and Developer acknowledge that Transferee, the Transferee Project and Developer (except as specifically released by Section 6 hereof) remain subject to the terms and obligations of the Development Agreement and other than the Transferee Project, Transferee will not assert rights of the Developer to the Project Site.

6. Release of Developer. The City hereby specifically agrees to release the Developer from the obligations, terms and conditions assumed by the Transferee set forth in Section 4(a) through (g) of this Agreement, but only to the extent that the same pertain to the Transferee Project. Except as to the specific obligations assumed by Transferee in Section 4(a) through (g) of this Agreement for the Transferee Project, the Developer hereby understands and agrees that Developer remains responsible for all of the terms and conditions of the Development Agreement and for the balance of the Project Site. Additionally, nothing in this Agreement shall be deemed to release the Developer or the Guarantor from the provisions pertaining to the Switzer Damages in Section 3.05 or the Switzer Damages Guaranty in Section 3.05(d).

7. Estoppel. Within a reasonable time following request by Transferee, the parties agree to execute a commercially reasonable estoppel agreement for the purpose of confirming the status of the Development Agreement and the rights, duties, and obligations of the Transferee thereunder; provided however that in no event shall the estoppel modify or amend any of the terms and conditions of the Development Agreement (as the same pertains to the Transferee Project) or this Agreement.

8. Consent. In accordance with the terms of Section 6.04(b) of the Development Agreement, the City and Developer hereby consent to an assignment of the right to use economic development revenue bond ("EDRB") financing to Transferee in order to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for Transferee's Project, subject to the terms and conditions set forth herein. Subject

to all Applicable Laws and Requirements, and subject further to compliance by Transferee with all City requirements for the issuance of EDRBs, the parties hereby agree that Transferee may use EDRB financing to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for the Transferee's Project. However, the parties hereby understand and agree that, for purposes of the EDRB financing agreed to and provided for in this Section 8, the EDRBs shall not be used for abatement of ad valorem taxes for the Transferee's Project or the Project Site, except for and excluding public improvements thereon. Further, Transferee hereby understands and agrees that the EDRBs for the Transferee's Project shall be redeemed and paid in full within twelve (12) months from the date of completion of the Improvements for the Transferee's Project.

[Remainder of page intentionally left blank. Signature pages immediately follow.]

IN WITNESS WHEREOF, the City, Transferee and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written

DEVELOPER:

**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 _____, 2015, 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:

The CITY:
CITY OF OVERLAND PARK, KANSAS

ATTEST:

Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy Owens
Deputy City Attorney

APPROVED AS TO FORM:

Todd A. LaSala,
Stinson Leonard Street LLP

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this ____ day of _____, 2015, 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:
