

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into this ____ day of _____, 2009 by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (“City”); and **OAK PARK MALL, L.L.C.**, a Delaware limited liability company, (the “Developer”).

A. The City has authority to create a transportation development district (“TDD”), pursuant to K.S.A. 12-17,140 through 12-17,149, and amendments thereto (the “TDD Act”), for the purpose of financing transportation related projects. Under the TDD Act, the owners of all land within the proposed TDD boundaries may petition the City to request the creation of a TDD and to impose special assessments or transportation development district sales taxes (the “TDD Sales Tax”) to pay the cost of a transportation development project and/or to repay special obligation bonds issued by the City to finance such projects.

B. The Developer is the owner of certain land in the City located at 95th and Quivira, commonly referred to as Oak Park Mall (the “Development”).

C. On August 15, 2007, the Developer, along with all other property owners within the Development, submitted a petition (the “Petition”) to the City requesting the formation of a TDD (the “Oak Park Mall TDD”). A copy of the Petition is attached hereto as **Exhibit A**. A legal description of the boundaries of the Oak Park Mall TDD is set forth on **Exhibit B** attached hereto.

D. On September 17, 2007, the City approved the creation of the Oak Park Mall TDD through the adoption of Resolution No. 3620 (the “TDD Resolution”). As was contemplated in the Petition, the TDD Resolution approved certain transportation related projects within the Oak Park Mall TDD, as more particularly described on **Exhibit C** attached hereto (the “TDD Improvements”) to be financed with TDD Bonds payable from revenues received from the imposition of a TDD Sales Tax. The TDD Sales Tax commenced on January 1, 2008. A map showing the location of the TDD Improvements is attached hereto as **Exhibit D**.

E. The Parties now desire to enter into this Agreement to formalize the construction and financing of the TDD Improvements.

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**

A. **Definitions of Words and Terms**. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. “Agreement” means this Agreement as may be amended in accordance with the terms hereof.
2. “City” means the City of Overland Park, Kansas.
3. “City Expenses” means the expenses of the City incurred for administrative, financial and legal services incurred in connection with the TDD Improvements.
4. “City Representative” means the City Manager and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed on behalf of the City.
5. “Developer” means Oak Park Mall, LLC, and its successors and assigns.
6. “Eligible Expenses” means expenses related to the Project to the extent such expenses are “costs” or a “project” as defined in the TDD Act, the estimated amounts of which Eligible Expenses are shown in **Exhibit C**.
7. “Event of Default” means any event or occurrence as defined in Article VI of this Agreement.
8. “Existing Deposit” means the TDD Sales Tax deposited with the City and being held in the TDD Sales Tax Fund as of the date of the first issuance of any TDD Bonds.
9. “Net TDD Bond Proceeds” means the proceeds from the sale of the TDD Bonds available to finance the TDD Improvements.
10. “Parties” means the City and the Developer.
11. “Petition” means the petition filed by the Developer on August 15, 2007 and approved by the City to create the Oak Park Mall TDD.
12. “Project” means the improvements described in the Revised Preliminary Development Plan, and Final Development Plan, approved by the City as such plans might be modified or revised in accordance with the Unified Development Ordinance of the City of Overland Park.
13. “State” means the State of Kansas.
14. “TDD Act” means K.S.A. 2007 Supp. 12-17,140 through 12-17,149 and amendments thereto.
15. “TDD Bond Documents” means the bond indentures, the official statements, the bond ordinances, the arbitrage letters of instructions and other documents evidencing the sale and issuance of the TDD Bonds.

16. “TDD Bond Fund” means the fund, if any, within the TDD Sales Tax Fund established under the TDD Bond Documents to provide for the payment of the principal of and interest on the TDD Bonds.

17. “TDD Bonds” means transportation development district bonds issued by the City to finance all or a portion of the TDD Projects.

18. “TDD Improvements” means the projects and related permissible improvements as authorized under the TDD Act, as more particularly described in **Exhibit C**.

19. “TDD Resolution” means Resolution No. 3620 adopted by the City on September 17, 2007. A copy of the TDD Resolution is attached hereto as **Exhibit E**.

20. “TDD Sales Tax” means the transportation development district sales authorized by K.S.A. 2007 Supp. 12-17,145 and amendments thereto.

21. “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 Oak Park Mall TDD, and that is used to finance the TDD Improvements pursuant to the TDD Act.

22. “Term” means from the date of execution of the Agreement to the later of the date of issuance and delivery of the TDD Bonds or the reimbursement in full of the cost of the TDD Improvements.

23. “Underwriter” means the underwriter or original purchaser of or placement agent for the TDD Bonds selected by the City in consultation with the Developer.

B. **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:

1. The terms defined in this Article include the plural as well as the singular.

2. 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.

3. 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.

4. 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.

5. 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.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II **DEVELOPMENT OF THE PROJECT**

A. **Completion of the TDD Improvements.** The Developer shall complete the TDD Improvements in conformance with the Revised Preliminary Development Plan, Final Development Plan, related stipulations, City building codes, City Ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain any and all permits, which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

B. **Cost of the Project.** Developer shall be responsible for and will bear all costs of the Project, including the TDD Improvements, subject to the terms of this Agreement. The total estimated costs of the TDD Improvements are set forth in **Exhibit C**.

C. **Indemnification.** The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees relating to the Project and the activities of the Developer and its contractors, subcontractors, agents and employees under this Agreement, including, but not limited to, claims for loss or damage to any property or injury to or death of any person, asserted by or on behalf of any person, firm, corporation or governmental authority arising out of or in any way connected with any property of the Developer, or the conditions, occupancy, use, possession, conduct or management of, or any work done in or about the Project by the Developer or its agents. The Developer shall give the City immediate written notice of any claim, suit or demand which may be subject to this provision.

D. **Insurance.**

1. Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the Term and during all phases of the Project, maintain or cause to be maintained insurance with respect to the Project 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, in the commercially reasonable judgment of the Developer are adequate to protect the Developer and the Project. Throughout the Term, the Developer agrees to provide the City upon request appropriate evidence of property insurance and a certificate of liability insurance (“Certificate”) listing all coverages applicable to the Project.

2. The Developer shall require of the Contractor hired to perform work on any public infrastructure the following insurance requirements:

(a) General: The Contractor shall secure and maintain, throughout the Term of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City 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.

(b) 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.

The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate 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. The Developer shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

(c) 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) Explosion, Collapse & Underground
- (3) Broad Form Contractual / Contractually Assumed Liability
- (4) Independent Contractors
- (5) Broad Form Property Damage
- (6) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

(7) **NAME CITY OF OVERLAND PARK AS
“ADDITIONAL INSURED”**

(d) 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”**

(e) 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

(f) Workers’ Compensation: This insurance shall protect the Contractor against all claims under applicable state workers’ compensation laws. The 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

(g) Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

- (i) Is licensed to do business in the State of Kansas;
- (ii) Carries a Best’s policy holder rating of A- or better; and
- (iii) Carries at least a Class VIII financial rating, **or**

(iv) Is a company mutually agreed upon by the City and Contractor.

(h) Subcontractors' Insurance: If a part of the work is to be sublet, the Developer shall either:

1. 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.

Whichever option is chosen, contractor shall 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.

E. Discrimination.

1. In accordance with the City's standard contracting requirements, the Developer agrees that:

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

(c) If the Developer fails to comply with the manner in which the Developer reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

(d) If the 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, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

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

2. The Developer further agrees that the 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. 1201 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 this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

ARTICLE III **TDD FINANCING**

A. **TDD Sales Tax.** The City has delivered a copy of the TDD Resolution to the Kansas Department of Revenue (“DOR”) imposing the TDD Sales Tax effective January 1, 2008. The Developer agrees to provide ongoing contact information to the DOR and the City regarding new tenants within the Oak Park Mall TDD. Except as otherwise set forth herein, all TDD Sales Tax shall be available for and dedicated to pay Eligible Expenses for the duration of the TDD term or until the City’s obligations under this Agreement have been satisfied, whichever is first, and shall be utilized according to the procedures set forth herein in the following order of priorities:

1. First, pursuant to 2009 Senate Bill No. 78, Section 2, the Existing Deposit shall be used to pay accrued City Expenses, and the fees described in Article VII (A) incurred to the date hereof, and Eligible Expenses to the extent of the Existing Deposit;
2. Second, to pay the principal and interest on any TDD Bonds issued to finance the TDD Project;
3. Third, to pay or reimburse the City for all City Expenses; and
4. Fourth, to the extent permitted under the TDD Act, to reimburse the Developer for remaining Eligible Expenses.

B. **TDD Sales Tax Fund.** During the existence of the Oak Park Mall TDD and prior to issuance of TDD Bonds, if any, all TDD Sales Taxes generated within the Oak Park Mall TDD shall be deposited into a TDD Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State of Kansas and this Agreement.

C. **TDD Bonds.** On a date agreed to by the City and the Developer and subject to the conditions set forth below in paragraph D, the City will issue TDD Bonds in one or more series payable from the TDD Sales Tax.

D. **Conditions Precedent to TDD Bond Issuance.** The issuance of the TDD Bonds shall be subject to Developer complying with the terms of this Agreement and the following:

1. The Developer provides such documentation to the City as required by the Underwriter to reasonably demonstrate that the TDD Sales Tax revenues generated within the Oak Park Mall TDD are sufficient to pay debt service on the TDD Bonds with a coverage factor that the Underwriter determines is necessary and that is agreed to by the Developer and the City. The maximum principal amount of the TDD Bonds shall be Nineteen Million Three Hundred Thousand and 00/100 Dollars (\$19,300,000.00) which may be issued in one or more series.

2. The terms of the TDD Bonds including, but not limited to, the amounts and any limitations on sales and transfers to sophisticated investors only, shall be acceptable to the Developer and the City.

3. Certification of Expenditures has been provided and accepted in accordance with Article IV(B) below.

4. The Underwriter shall hold the TDD Bonds in its own account or be responsible for marketing and selling the TDD Bonds, and the City shall be under no obligation to issue TDD Bonds if such TDD Bonds are not marketable after reasonable effort by the Underwriter. Notwithstanding the foregoing, if the Underwriter determines that the TDD Bonds are not marketable after a reasonable effort by such Underwriter, the Developer shall have a right to request that the City market the TDD Bonds thereafter with an alternative underwriter that is reasonably approved by the City and Developer and upon terms and conditions that are reasonably approved by the City and Developer.

5. The Kansas Attorney General approves the transcript of proceedings relating to the TDD Bonds as required by K.S.A. 10-108.

6. Bond Counsel provides to the City an opinion to the effect that the TDD Bonds have been validly issued under Kansas law and, if applicable, the interest on the TDD Bonds is exempt from Kansas and federal income taxation, subject to the standard exceptions.

E. Satisfaction of Conditions. Upon receipt of the information set forth above in Section III(D) above, the City shall at the Developer's request and within a reasonable time thereafter either:

1. Provide written notice to the Developer that the requirements of said subsection have been satisfied, at which time it will be the City's intent to issue the TDD Bonds; or

2. Provide written notice as to why such information is not satisfactory and provide specific instructions for resolving any alleged deficiencies.

F. TDD Bond Fund. If TDD Bonds are issued by the City, a TDD Bond Fund shall be created and administered by the City or its designee and will be utilized solely to repay the TDD Bonds and amounts, if any, required to pay rebate amounts. The specifics of the issuance and repayment of the TDD Bonds shall be in accordance with the TDD Bond Documents, to be approved by City ordinance, in accordance with this Agreement. In no event, except by mutual agreement between the parties hereto, shall the TDD Bond Documents be inconsistent with this Agreement. Upon issuance of the TDD Bonds, the Net TDD Bond Proceeds shall be disbursed to the Developer by the City or Bond Trustee for the purpose of funding Eligible Expenses in accordance with the terms of this Agreement and the TDD Bond Documents.

G. Eligible Expenses Reimbursement. At the Developer's request, in lieu of issuing TDD Bonds to finance Eligible Expenses, the City agrees, to the extent permitted under State

law, to reimburse the Developer from the TDD Sales Tax Fund for Eligible Expenses in accordance with the provisions of this Agreement.

H. Termination of the TDD. The City shall not terminate the TDD or cease the collection of TDD Sales Tax, except as provided by law, or as requested by the Developer.

ARTICLE IV **TDD REIMBURSEMENT**

A. TDD Reimbursement. All TDD Sales Tax shall be used to reimburse the Developer for the cost of financing construction of the TDD Improvements, as described in **Exhibit C**, or to pay the principal of or interest on the Bonds. It is anticipated that the estimates of expenses related to the TDD Improvements may change prior to and during actual construction of the TDD Improvements; however, in no event will the reimbursement exceed the maximum authority set out by the TDD Resolution and any changes must be approved by City.

B. Certification of Expenditures. Developer shall certify all costs and expenditures to be made in connection with the TDD Improvements in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditure in the form attached hereto as **Exhibit F** setting forth the amount for which reimbursement is sought and an itemized listing of the related TDD Improvement. Prior to or concurrently with the first Certification of Expenditure submitted to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Such documentation shall include, but not be limited to:

(a) A scalable “General Layout” plan sheet showing the general layout and location of the TDD eligible items. Non-eligible items shall be clearly differentiated from eligible items.

(b) A summary of plan quantities delineating the eligible from non-eligible items.

2. Each Certification 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 (for example, 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.

3. The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certification of Expenditure is submitted, to examine the Developer’s and other’s records relating to all costs of TDD Improvements 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. The Developer hereby agrees to pay all actual and verifiable expenses incurred by the City pursuant to this paragraph 3.

4. The City shall have sixty (60) calendar days after receipt of any Certification of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditure relates to the TDD Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditure and reimburse the Developer for financing the cost of the TDD Improvements using TDD Bond Proceeds. If the City reasonably disapproves of the Certification of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period.

5. Within ninety (90) days of execution of this Agreement, the Developer shall submit a Certification of Expenditures for those expenditures made prior to the execution of this Agreement in connection with the TDD Improvements. During the Term, the Developer shall submit a Certification of Expenditures for those expenditures made in connection with the TDD Improvements within sixty (60) days of each expenditure.

ARTICLE V **ASSIGNMENT OF AGREEMENT BY DEVELOPER**

The Developer shall not assign or transfer all or any of its rights or duties under this Agreement without the prior written approval of the City (which will not be unreasonably withheld), except for assignments, transfers and conveyances of all or substantially all of Developer's rights and duties under this Agreement to a subsidiary or affiliate which is owned or controlled by the Developer or any entity owned or controlled, directly or indirectly, by the Developer. In the event of a transfer pursuant to this Article V that does not require the consent of the City, the Developer shall nonetheless promptly provide written notice of the same to the City.

ARTICLE VI **DEFAULTS AND REMEDIES**

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a party, nor be entitled to damages if the other party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

B. Remedies on Default. Whenever any Event of Default by Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements until such Event of Default is cured by the Developer and/or terminate this Agreement.

C. Legal Actions.

1. 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.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the 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.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

E. 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.

F. Enforced Delay; Extension of Times of Performance.

1. 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 default of the other party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; market conditions; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather.

2. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and the Developer.

ARTICLE VII **GENERAL PROVISIONS**

A. City Expenses. The Developer shall be responsible for and pay, within thirty (30) days of the invoice, the reasonable legal fees of the City's Bond Counsel incurred in connection with the creation of the Oak Park Mall TDD and related agreements and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses. Bond Counsel fees incurred with the issuance of the TDD Bonds, if any, will be paid from TDD Bonds and if such TDD Bonds are not issued shall be paid by the Developer. The Developer shall pay the City's financial advisor, where such services performed by the financial advisor are reasonably related and necessary to the City's analysis and review of the TDD Improvements financing including any issuance of TDD Bonds. Such financial advisor fees will be paid from proceeds of TDD Bonds and if such TDD Bonds are not issued shall be paid by the Developer.

B. 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.

C. 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.

D. Immunity of Officers, Employees and Members of the City. No personal recourse shall be had for the payment of the principal of or interest on the TDD Bonds 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 the Developer or Agent, or any successor in interest, for any default or breach by the City.

E. Right to Inspect. The 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 the Developer's books and records relating to the TDD Improvements as pertinent to the purposes of this Agreement.

F. Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Oak Park Mall Shopping Center, without charges or fees, at normal construction hours during the period of construction for

purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements.

G. 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.

H. 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.

I. 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.

J. Kansas Law. This Agreement shall be construed in accordance with the laws of the State of Kansas. To the extent there is a conflict between this Agreement and the Resolution, the Resolution is controlling.

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

To the Developer:

Oak Park Mall, LLC
CBL Center, Suite 500
2030 Hamilton Place Boulevard
Chattanooga, Tennessee 37421-6000
Attention: General Counsel

With copies to:

Lewis A. Heaven, Jr.
Lathrop & Gage LLP
10851 Mastin Boulevard, Ste. 1000
Overland Park, KS 66210

To the City:

John Nachbar, 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

Bob Watson, 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.

L. 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.

M. Recordation of Agreement. The parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Johnson County, Kansas.

N. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

O. 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.

P. 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.

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

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

APPROVED AS TO FORM:

Janet S. Garms, Bond Counsel

OAK PARK MALL LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____)

) ss.

COUNTY OF _____)

On this _____ day of _____, 2009, before me personally appeared _____ to me personally known, who being by me duly sworn did say that he/she is the _____ of OAK PARK MALL, LLC., a Delaware 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

My Commission Expires:

[SEAL]

EXHIBITS

Exhibit A	TDD Petition
Exhibit B	Legal Description of the TDD District
Exhibit C	TDD Improvements and Cost Estimates
Exhibit D	Map of the TDD Improvements
Exhibit E	TDD Resolution
Exhibit F	Certification of Expenditure

PETITION

REQUESTING THE CREATION OF A TRANSPORTATION DEVELOPMENT DISTRICT

TO: The Governing Body of the Overland Park, Kansas (hereinafter called "Governing Body")

The undersigned, being the owners of record, whether resident or not, of all of the land area contained within the hereinafter described proposed transportation development district to be located within the City of Overland Park, Kansas (the "City"), do hereby request that the City create such transportation development district and authorize the construction of the transportation development district project improvements 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:

Boundaries of Proposed Transportation District

A legal description of the boundaries of the proposed transportation development district (the "District") is set forth on Exhibit A attached hereto and incorporated by reference herein.

A map generally outlining the boundaries of the proposed District is attached as Exhibit B hereto, and incorporated by reference herein.

General Nature of Proposed Transportation District Projects

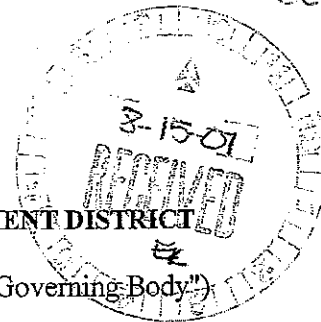
The general nature of the proposed transportation district projects (the "Projects") to be constructed within the proposed District is set forth on Exhibit C attached hereto and incorporated by reference herein.

Maximum Cost and Method of Financing

The maximum cost of the improvements attributable to the proposed district is \$19,300,000 00 Revenue bonds will be secured by the pledge of money received from the imposition of a transportation development district sales tax (the "TDD Tax"), in an amount not to exceed 5%, on the selling of tangible personal property at retail or rendering or furnishing of taxable services within the proposed District. There will be no special assessments on property within the boundaries of the District.

Names may not be withdrawn from this Petition by the signers hereof after the governing body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first.

IN WITNESS WHEREOF, we the undersigned petitioners have executed the above foregoing petition to create The Oak Park Mall Transportation Development District at the dates recorded below:



OAK PARK MALL, LLC
a Delaware limited liability company

By: CBL & Associates Limited Partnership, Manager

By: CBL Holding I, Inc., General Partner

By: Victoria S. Berghel
Victoria S. Berghel, Senior Vice-President and
General Counsel

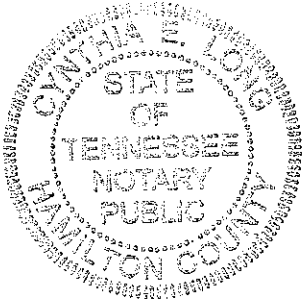
Date: June 27, 2007

STATE OF Tennessee)
) ss.
COUNTY OF Hamilton)

On this 27th day of June, 2007, before me personally appeared Victoria S. Berghel, to me personally known, who being by me duly sworn did say that she is the Senior Vice-President and General Counsel of CBL Holding I, Inc., General Partner of CBL & Associates Limited Partnership, Manager of OAK PARK MALL, LLC, a limited liability company, and that said instrument was signed and delivered in behalf of said company and acknowledged to me that he executed the same as the free act and deed of said company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Cynthia E. Long
NOTARY PUBLIC



My Commission Expires:
April 10, 2010

THIS PEITION was filed in my office on _____, 2007; and was examined, considered and found sufficient by the Governing Body of the City of Overland Park on _____, 2007.

City Clerk

Exhibit A to TDD Petition

TDD Boundary Legal Description

EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER LAND

Lots 2, 6, 8, 9, 10 and 11, Block 1, and Lot 1, Block 2, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof; and

Lots 13 and 15, Block 1, OAK PARK SHOPPING CENTER, SECOND PLAT, a Replat of Lots 3, 4 & 5, Block 1, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof; and

Lots 7A and 8A, Block 1, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof, as said Lots 7A and 8A are shown on the Certificate of Survey recorded in Volume 5026 at Page 148, effecting a lot split of Lot 7, Block 1, OAK PARK SHOPPING CENTER, into said Lots 7A and 8A; and

Lots 14A and 14B, Block 1, OAK PARK SHOPPING CENTER, SECOND PLAT, a Replat of Lots 3, 4 & 5, Block 1, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof, as said Lots 14A and 14B are shown on the Certificate of Survey recorded in Volume 5026 at Page 149, effecting a lot split of Lot 14, Block 1, OAK PARK SHOPPING CENTER, SECOND PLAT, a Replat of Lots 3, 4 & 5, Block 1, OAK PARK SHOPPING CENTER, into said Lots 14A and 14B; and

Lot 12, Block 1, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof, LESS AND EXCEPT that part of Lot 12 conveyed to the City of Overland Park, Kansas, by Deed of Dedication dated October 23, 1995, and recorded in Volume 5034 at Page 269; said excepted part being described as follows:

Beginning at the most Southerly, Southwest corner of said Lot 12, said point also being on the Northerly right-of-way of 97th Street, as now established; thence N 87 degrees 45 minutes 27 seconds E, along the Southerly line of said Lot 12 and along the Northerly right-of-way line of said 97th Street, a distance of 60.72 feet, to a point of curvature; thence Easterly and Southeasterly along the Southerly line of said Lot 12 and along the Northerly right-of-way line of said 97th Street, said line being on a curve to the right

having a radius of 479.50 feet and a central angle of 5 degrees 37 minutes 59 seconds, a distance of 47.14 feet, to a point of compound curvature; thence Easterly and Southeasterly, along the Southerly line of said Lot 12 and along the Northerly right-of-way line of said 97th Street, said line being on a curve to the right having a radius of 433.41 feet, a central angle of 26 degrees 56 minutes 03 seconds and whose initial tangent bearing is S 86 degrees 36 minutes 32 seconds E, a distance of 203.74 feet, to the Southeast corner of said Lot 12; thence N 32 degrees 43 minutes 23 seconds E, along the Southeasterly line of said Lot 12, a distance of 4.79 feet; thence N 58 degrees 22 minutes W, a distance of 77.62 feet; thence Northwesterly and Westerly along a curve to the left having a radius of 490.99 feet, a central angle of 21 degrees 01 minute 18 seconds and whose initial tangent bearing is N 71 degrees 13 minutes 15 seconds W, a distance of 180.14 feet, to a point of tangency; thence S 87 degrees 45 minutes 27 seconds W, a distance of 65.12 feet; thence N 47 degrees 10 minutes 29 seconds W, a distance of 21.99 feet, to a point on the Westerly line of said Lot 12, said point also being on the Easterly right-of-way line of Quivira Road, as now established; thence S 2 degrees 06 minutes 25 seconds E, along the Westerly line of said Lot 12, and along the Easterly right-of-way line of said Quivira Road, a distance of 7.06 feet; thence S 47 degrees 10 minutes 29 seconds E, along the Westerly line of said Lot 12 and along the Easterly right-of-way line of said Quivira Road, a distance of 28.25 feet, to the point of beginning.

Exhibit B to TDD Petition

(See attached Map)

EXHIBIT B

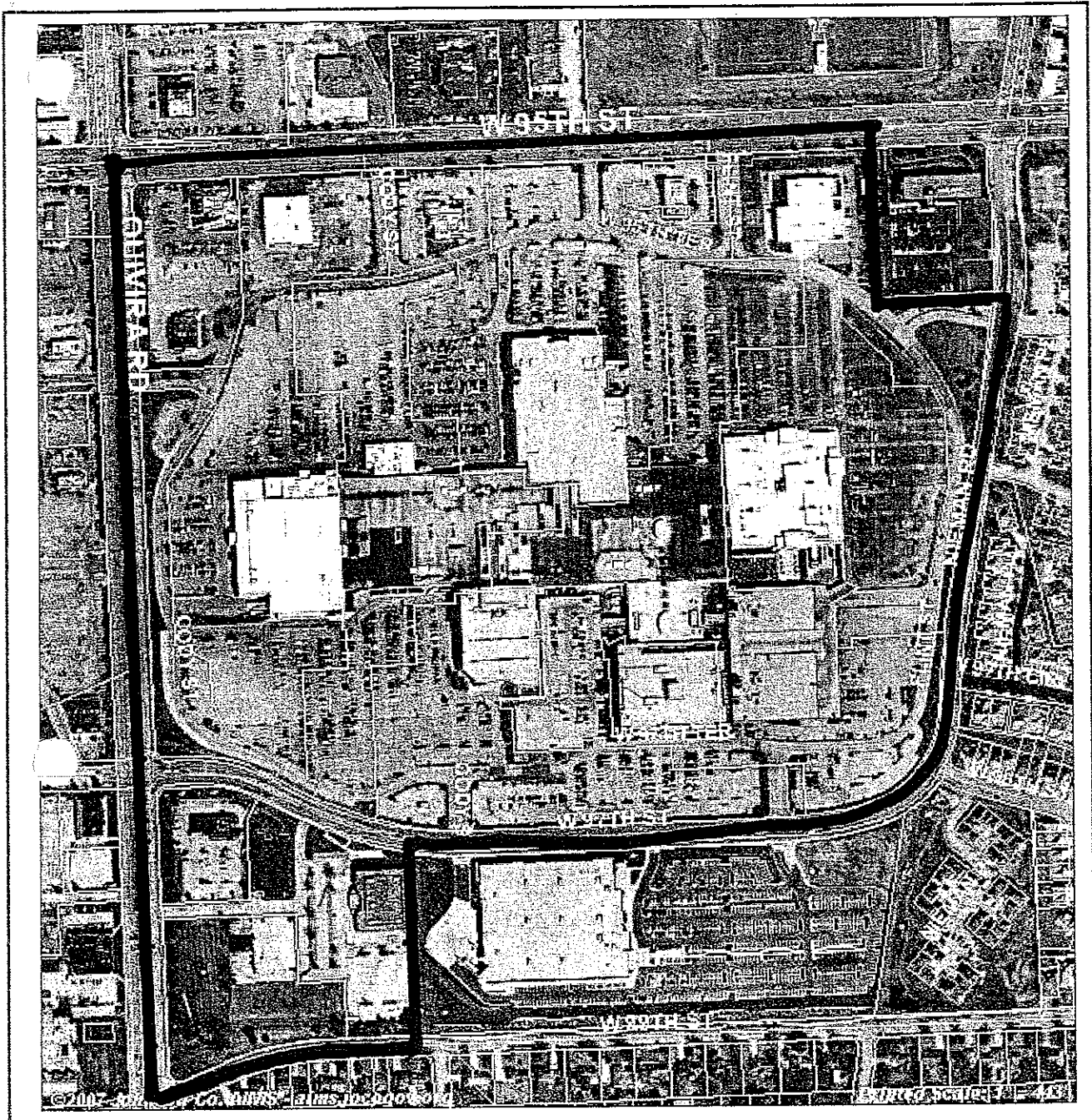


Exhibit "C"

Oak Park Mall – RENOVATION AND EXPANSION

Transportation Development District Petition

Scope of Transportation-Related Work Description

Demolition and Abatement

- Demolition of selected parking and paving areas for repair of same
- Demolition of sidewalks, landscaping and selected underground utilities
- Demolition of detention basin (Plaza)
- Abatement of any hazardous materials, storage tanks, etc. associated with this demolition

Site Work

- Erosion control devices related to transportation-related construction
- Rough and fine grading of parking, landscape and utility construction areas
- Engineering, layout and testing of the above

Parking – Surface

- Engineering, layout and testing
- Repair and/or replace sub-grade material as required by Geotechnical engineer
- Add French drains as required by Geotechnical engineer
- Repair and/or replace stormdrainage structures
- Re-work or construct, as necessary, concrete curb and gutter
- Asphalt and concrete paving (standard and heavy duty) per the approved Development Plan
- Pavement markings, signage, etc.

Common Areas

- Replace landscaping and repair irrigation per the approved Development Plan and zoning requirements
- Repair and/or replace exterior common area site amenities including sidewalks and decorative lighting
- Replace site environmental graphics, signage and way finding
- Visual and physical pedestrian connections from 95th to mall entries

Lighting

- Re-work, repair, replace or install parking lot lights and poles per the approved Development Plan and zoning requirements
- Pedestrian level lighting

Infrastructure/Utilities

- Repair, installation and/or replacement of select primary and secondary utilities including:
 - Water (domestic and fire)
 - Sanitary sewer
 - Electric
 - Telephone
 - Gas
 - Storm water
- Maintenance and repair of existing concrete box culvert under mall parcel
- Installation of underground detention basin in parking area (Plaza)

EXHIBIT B

Lots 2, 6, 8, 9, 10 and 11, Block 1, and Lot 1, Block 2, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof; and

Lots 13 and 15, Block 1, OAK PARK SHOPPING CENTER, SECOND PLAT, a Replat of Lots 3, 4 & 5, Block 1, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof; and

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having a radius of 479.50 feet and a central angle of 5 degrees 37 minutes 59 seconds, a distance of 47.14 feet, to a point of compound curvature; thence Easterly and Southeasterly, along the Southerly line of said Lot 12 and along the Northerly right-of-way line of said 97th Street, said line being on a curve to the right having a radius of 433.41 feet, a central angle of 26 degrees 56 minutes 03 seconds and whose initial tangent bearing is S 86 degrees 36 minutes 32 seconds E, a distance of 203.74 feet, to the Southeast corner of said Lot 12; thence N 32 degrees 43 minutes 23 seconds E, along the Southeasterly line of said Lot 12, a distance of 4.79 feet; thence N 58 degrees 22 minutes W, a distance of 77.62 feet; thence Northwesterly and Westerly along a curve to the left having a radius of 490.99 feet, a central angle of 21 degrees 01 minute 18 seconds and whose initial tangent bearing is N 71 degrees 13 minutes 15 seconds W, a distance of 180.14 feet, to a point of tangency; thence S 87 degrees 45 minutes 27 seconds W, a distance of 65.12 feet; thence N 47 degrees 10 minutes 29 seconds W, a distance of 21.99 feet, to a point on the Westerly line of said Lot 12, said point also being on the Easterly right-of-way line of Quivira Road, as now established; thence S 2 degrees 06 minutes 25 seconds E, along the Westerly line of said Lot 12, and along the Easterly right-of-way line of said Quivira Road, a distance of 7.06 feet; thence S 47 degrees 10 minutes 29 seconds E, along the Westerly line of said Lot 12 and along the Easterly right-of-way line of said Quivira Road, a distance of 28.25 feet, to the point of beginning.

EXHIBIT C

Oak Park Mall – RENOVATION AND EXPANSION

Transportation Development District Petition

Scope of Transportation-Related Work Description

Demolition and Abatement

- Demolition of selected parking and paving areas for repair of same
- Demolition of sidewalks, landscaping and selected underground utilities
- Demolition of detention basin (Plaza)
- Abatement of any hazardous materials, storage tanks, etc associated with this demolition

Site Work

- Erosion control devices related to transportation-related construction
- Rough and fine grading of parking, landscape and utility construction areas
- Engineering, layout and testing of the above

Parking – Surface

- Engineering, layout and testing
- Repair and/or replace sub-grade material as required by Geotechnical engineer
- Add French drains as required by Geotechnical engineer
- Repair and/or replace stormdrainage structures
- Re-work or construct, as necessary, concrete curb and gutter
- Asphalt and concrete paving (standard and heavy duty) per the approved Development Plan
- Pavement markings, signage, etc

Common Areas

- Replace landscaping and repair irrigation per the approved Development Plan and zoning requirements
- Repair and/or replace exterior common area site amenities including sidewalks and decorative lighting
- Replace site environmental graphics, signage and way finding
- Visual and physical pedestrian connections from 95th to mall entries

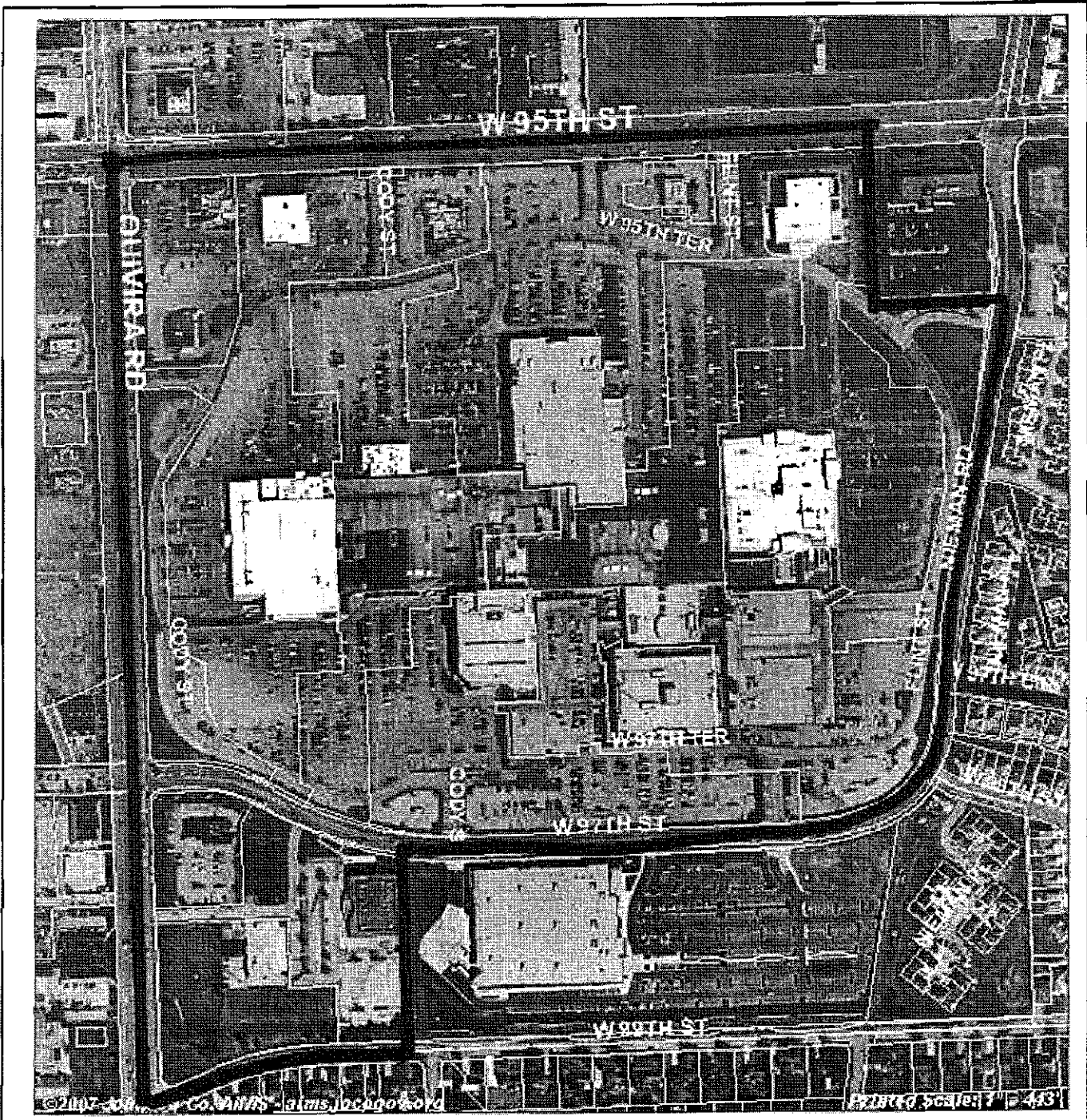
Lighting

- Re-work, repair, replace or install parking lot lights and poles per the approved Development Plan and zoning requirements
- Pedestrian level lighting

Infrastructure/Utilities

- Repair, installation and/or replacement of select primary and secondary utilities including:
 - Water (domestic and fire)
 - Sanitary sewer
 - Electric
 - Telephone
 - Gas
 - Storm water
- Maintenance and repair of existing concrete box culvert under mall parcel
- Installation of underground detention basin in parking area (Plaza)

EXHIBIT D



RESOLUTION NO. 3620

A RESOLUTION MAKING FINDINGS AS TO THE ADVISABILITY OF AND AUTHORIZING THE CREATION OF A TRANSPORTATION DEVELOPMENT DISTRICT IN THE SOUTHEAST CORNER OF QUIVIRA ROAD AND 95TH STREET; AUTHORIZING THE MAKING OF CERTAIN TRANSPORTATION PROJECTS RELATING THERETO; APPROVING THE MAXIMUM COST OF SUCH TRANSPORTATION PROJECTS; PROVIDING FOR THE METHOD OF FINANCING; AUTHORIZING THE IMPOSITION OF A TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX WITHIN THE TRANSPORTATION DEVELOPMENT DISTRICT; ESTABLISHING A METHOD OF COLLECTION OF SUCH SALES TAX AND PROVIDING FOR THE SEGREGATION OF SUCH SALES TAX REVENUES FOR THE PAYMENT OF THE COSTS OF CERTAIN TRANSPORTATION PROJECTS WITHIN SAID TRANSPORTATION DEVELOPMENT DISTRICT.

WHEREAS, pursuant to the Transportation Development District Act, K S A 12-17,140 *et seq* , as amended (the "Act"), the City of Overland Park, Kansas (the "City"), is authorized to acquire interests in property and to construct any project or undertaking relating thereto, including improving, constructing, reconstructing, maintaining, restoring, replacing, renewing, repairing, installing, furnishing, equipping or extending any bridge, street, road, highway access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hanger, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure, including, but not limited to, utility relocation, sanitary and storm sewers and lift stations, drainage conduits, channels and levees, streetlight, fixtures, connection and facilities, underground gas, water, heating and electrical services and connections located within or without the public-right-of-way, sidewalks and pedestrian underpasses or overpasses, and water main and extensions (collectively, the "transportation projects"); and

WHEREAS, the Act further authorizes the City, in order to pay the costs of such transportation projects, to impose a transportation development district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within a transportation development district in any increment of .10% or .25% not to exceed 1% and to issue special obligation bonds payable from such transportation development district sales tax; and

WHEREAS, a petition (the "Petition") was filed with the City Clerk of the City on August 15, 2007, requesting the creation of a transportation development district (the "Oak Park Mall IDD"), the making of transportation projects relating thereto and the imposition of a transportation development district sales tax in order to pay the costs of such transportation projects; and

WHEREAS, the Petition was signed by the owners of record, whether resident or not, of all of the land area within the proposed district; and

WHEREAS, the proposed Oak Park Mall TDD is located at the Southeast corner of Quivira Road and 95th Street, such proposed Oak Park Mall TDD being a portion of what is commonly referred to as the Oak Park Mall; and

WHEREAS, the Act provides that prior to creating any transportation development district, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such transportation development district and the construction of such transportation projects relating thereto, and direct and order the City Clerk to give notice of the hearing by publication once each week for two consecutive weeks in the official City newspaper and by certified mail to all property owners within the proposed transportation development district, the second publication to be at least seven days prior to the hearing and such certified mail sent at least ten days prior to such hearing; and

WHEREAS, the Governing Body of the City adopted Resolution No. 3612 (the "Resolution") on August 20, 2007, directing that a public hearing on the proposed Oak Park Mall TDD be held on September 17, 2007, and requiring that the City Clerk provide for notice of such public hearing as set forth in the Act; and

WHEREAS, the Resolution was published once each week for two consecutive weeks in the *Overland Park Sun* and notice of the public hearing was mailed by certified mail to all owners within the proposed Oak Park Mall TDD; and

WHEREAS, on September 17, 2007, the Governing Body of the City conducted a public hearing on the proposed Oak Park Mall TDD, the proposed transportation projects relating thereto, the method of financing the same and the imposition of a transportation development district sales tax; and

WHEREAS, the Governing Body of the City hereby finds and determines it to be advisable to create the Oak Park Mall TDD and set forth the boundaries thereof, authorize transportation projects relating thereto, approve the maximum costs of such transportation projects, approve the method of financing the same and impose the transportation development district sales tax, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

Section 1. Creation of Oak Park Mall Transportation Development District. The Governing Body of the City hereby finds and determines it is advisable to create the Oak Park Mall Transportation Development District within the City. A legal description of the property within the Oak Park Mall TDD is set forth on **Exhibit A** attached hereto and incorporated by reference. A map generally outlining the boundaries of the Oak Park Mall TDD is attached hereto as **Exhibit B** and incorporated herein by reference.

Section 2. Authorization of Transportation Development District Projects. The Governing Body of the City hereby finds and determines that it is advisable to authorize the transportation development district projects set forth on **Exhibit C** attached hereto (collectively, the "Project") within the Oak Park Mall TDD

Section 3. Maximum Cost. The maximum cost of the Project is nineteen million three hundred dollars (\$19,300,000)

Section 4. Method of Financing. The Project will be financed with special obligation bonds (the "Revenue Bonds") payable from revenues received from the imposition of a transportation development district sales tax in the amount of one-half of one percent (.5%) (the "TDD Sales Tax") on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act within the Oak Park Mall TDD. There will be **no** special assessments levied pursuant to the Act within the boundaries of the Oak Park Mall TDD.

Section 5. Imposition of Transportation District Sales Tax. In order to provide for the payment of the Project and/or the repayment of the Revenue Bonds issued to finance the same, the Governing Body of the City hereby imposes the Sales Tax within the Oak Park Mall TDD in an amount of one-half of one percent (.5%) on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers' sales tax act within the Oak Park Mall TDD with such Sales Tax to commence on January 1, 2008.

Section 6. Collection of the Sales Tax. The collection of the Sales Tax shall be made in the manner prescribed by the Act. The provisions of this section may be amended and/or modified pursuant to one or more ordinances and/or resolutions of the Governing Body of the City that provide for the issuance and repayment of the Revenue Bonds or by incorporation by reference any modifications to the Act that provide for collection of the Sales Tax

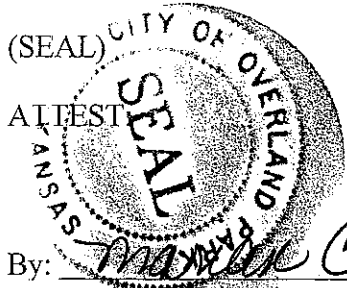
Section 7. Segregation of Sales Tax Revenues. All revenues derived from the collection of the Sales Tax shall be deposited into a special fund of the City to be designated as the Oak Park Mall Transportation Development District Sales Tax Revenue Fund. Such revenues shall be used to pay the costs of the Project and/or repay the Revenue Bonds and related expenses. The provisions of this section may be amended and/or modified pursuant to one or more ordinances and/or resolutions of the Governing Body of the City that provide for the issuance and repayment of the Revenue Bonds.

Section 8. This Resolution shall be effective upon its publication in an official City newspaper.

ADOPTED AND PASSED this 17th day of September, 2007

CITY OF OVERLAND PARK, KANSAS

By: Carl Gerlach
Carl Gerlach
Mayor



By: Marian Cook
Marian Cook
City Clerk

APPROVED AS TO FORM

By: Jane Neff-Brain
Jane Neff-Brain
Senior Assistant City Attorney

EXHIBIT A

Lots 2, 6, 8, 9, 10 and 11, Block 1, and Lot 1, Block 2, OAK PARK SHOPPING CENTER, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof; and

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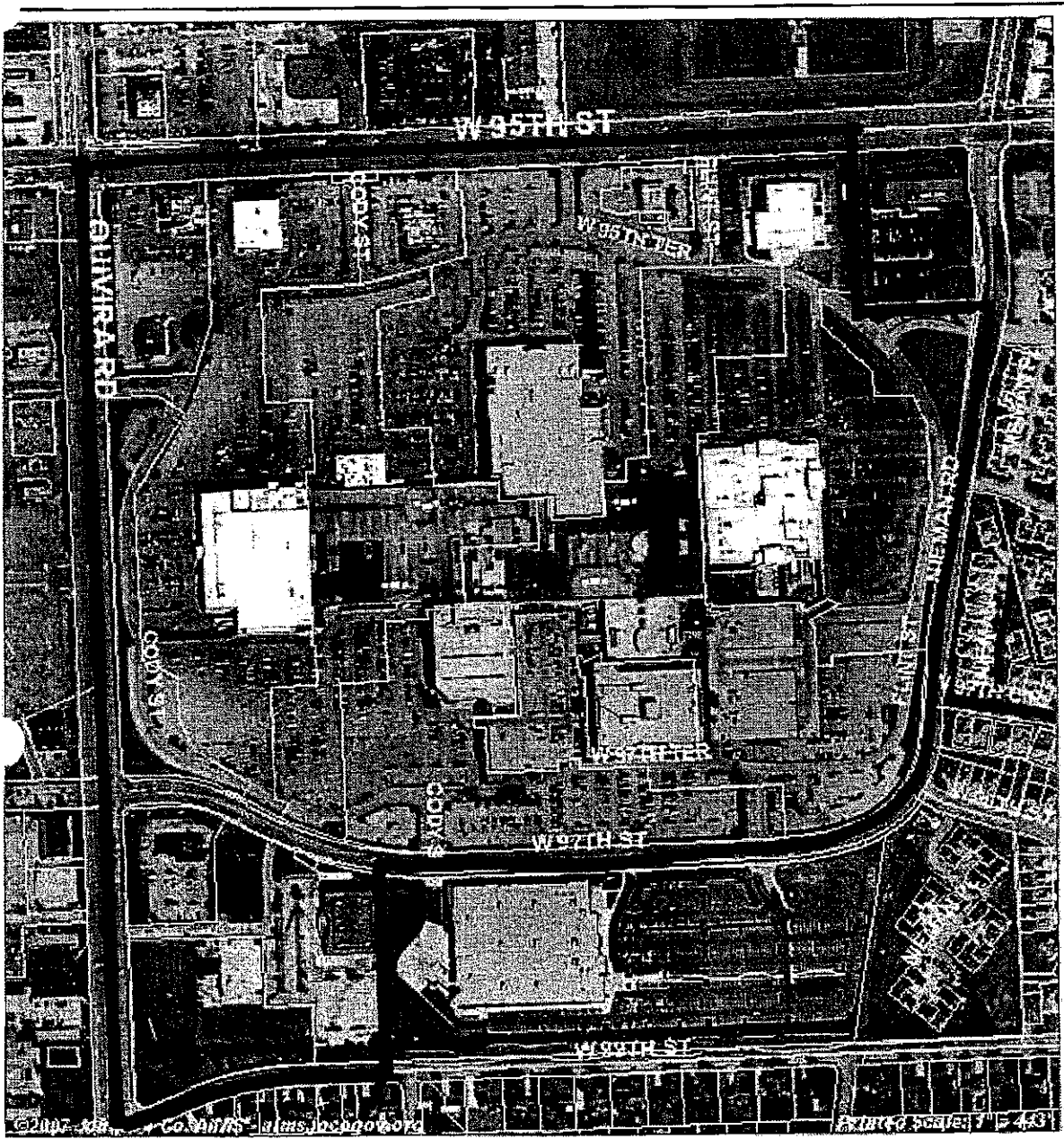


EXHIBIT C

Oak Park Mall – RENOVATION AND EXPANSION Transportation Development District Petition Scope of Transportation-Related Work Description

Demolition and Abatement

- o Demolition of selected parking and paving areas for repair of same
- o Demolition of sidewalks, landscaping and selected underground utilities
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Common Areas

- o Replace landscaping and repair irrigation per the approved Development Plan and zoning requirements
- o Repair and/or replace exterior common area site amenities including sidewalks and decorative lighting
- o Replace site environmental graphics, signage and way finding
- o Visual and physical pedestrian connections from 95th to mall entries

Lighting

- o Re-work, repair, replace or install parking lot lights and poles per the approved Development Plan and zoning requirements
- o Pedestrian level lighting

Infrastructure/Utilities

- o Repair, installation and/or replacement of select primary and secondary utilities including:
 - o Water (domestic and fire)
 - o Sanitary sewer
 - o Electric
 - o Telephone
 - o Gas
 - o Storm water
- o Maintenance and repair of existing concrete box culvert under mall parcel
- o Installation of underground detention basin in parking area (Plaza)

**EXHIBIT F
FORM OF CERTIFICATION OF EXPENDITURE**

**CERTIFICATION OF EXPENDITURES
OAK PARK MALL DEVELOPMENT PROJECT**

Date: _____

Certification # _____

Governing Body of the
City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 2009 (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and Oak Park Mall, L.L.C. (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the 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 the Developer pursuant to the Agreement.
2. All amounts have been advanced by the Developer for TDD Improvement 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.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ _____ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes ___ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

Approved:

City's Representative

By: _____
Its _____

**EXHIBIT A
TO CERTIFICATION OF EXPENDITURES
OF OAK PARK MALL DEVELOPMENT PROJECT
PAGE _____ OF _____**

Date: _____

Certification # _____

Amount of Expense

DESCRIPTION OF EXPENSE (ATTACH ADDITIONAL
SUPPORTING DOCUMENTATION)

\$ _____

1.

\$ _____

2.

\$ _____

3.

\$ _____

4.

\$ _____

TOTAL EXPENSES

\$ _____

Initials of Developer