

## CONSENT TO COLLATERAL ASSIGNMENT

THIS CONSENT TO COLLATERAL ASSIGNMENT (this “**Consent**”) is made as of \_\_\_\_\_, \_\_\_\_\_, by the CITY OF OVERLAND PARK, KANSAS (the “**City**”) and 95Q CORNER PROPERTIES, LLC, a Kansas limited liability company, having an address of c/o Copaken-Brooks, Town Pavilion, 1100 Walnut, Suite 2000, Kansas City, Missouri 64106 (“**Borrower**”) for the benefit of COUNTRY CLUB BANK, a Missouri banking corporation (“**Lender**”).

### WITNESSETH:

**WHEREAS**, 95Q Corner Properties, LLC, a Kansas limited liability company (“**Borrower**”) is indebted, obligated or liable to Lender in accordance with the terms and conditions of a certain Loan Agreement dated as of the date of this Consent (as the same may be amended, modified, supplemented or restated from time to time, the “**Loan Agreement**”) between Borrower and Lender, and the terms and conditions of the Note and the other Loan Documents (as such terms are defined in the Loan Agreement);

**WHEREAS**, as a condition to entering into the Loan Agreement with Borrower, Lender has required that Borrower execute and deliver to Lender that certain Collateral Assignment of Community Improvement District Rights of even date herewith (the “**Agreement**”).

**NOW THEREFORE**, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby agrees as follows:

1. Consent. The City hereby acknowledges and consents to the Agreement, and the pledge by Borrower to Lender of the CID Rights as security for Borrower’s obligations to Lender pursuant to the terms and conditions of the Agreement, the Note, the Loan Agreement and each of the other Loan Documents.

2. Attornment. If and to the extent that the Lender exercises its rights and remedies against the Borrower and expressly assumes all of the rights and obligations of Borrower under the Development Agreement in writing, the City acknowledges and agrees that it will make full and complete attornment with respect to the CID Rights (without the necessity of any other or further attornment or instrument) to (a) Lender or an affiliate of Lender organized to hold the CID Rights (Lender’s “**Affiliate**”), or (b) any receiver which Lender requests be appointed for the CID Rights. Upon request, the City will execute and deliver to Lender such further documents, instruments and other writings, and will do such other acts as Lender deems necessary or desirable, to confirm such attornment, and the Lender will execute and deliver to the City such further documents, instruments or other writings as the City deems necessary or desirable to confirm the Lender's assumption of the Borrower's obligations under the Development Agreement.

3. Payments of the City. By its execution and delivery of this Consent, the Borrower hereby authorizes and directs the City to pay all CID proceeds that Borrower is entitled to receive under the Development Agreement dated as of January 9, 2012 between the City and

Borrower (the "**Development Agreement**"), up to a total amount equaling the principal, interest and costs of the Loan as described in the Loan Agreement, to an account established with Lender, at \_\_\_\_\_ (the "**Development Agreement Account**"). The City acknowledges the direction and assignment of the CID proceeds from Borrower to Lender and agrees to pay all such CID proceeds to the Development Agreement Account as set forth herein. The City recognizes and agrees that the Lender shall have the right and ability to utilize funds on deposit in the Development Agreement Account towards the application of the Loan, provided however that (i) the CID proceeds are required to be used for payment or reimbursement of "Eligible Expenses" as defined in the Development Agreement, and accordingly, (ii) Lender's application of any such CID proceeds toward the Note or other obligations under the Loan Agreement shall be limited and restricted to the extent that Lender's loan proceeds were used to pay Eligible Expenses pursuant to the Development Agreement, and (iii) the CID proceeds are further limited and conditioned as set forth in the Development Agreement. Additionally, the parties understand and agree that:

a. Such direct payment by the City of the CID proceeds due from time to time shall discharge the City's obligations under the Development Agreement to the extent such payments are made and the City shall have no further liability to the Borrower for the amount of such sums so paid directly to Redevelopment Agreement Account for application to amounts due and owing under the Note and/or Loan Agreement.

b. Upon payment in full of Borrower's indebtedness to the Lender as evidenced by the Note and/or Loan Agreement, the Agreement and this Consent shall terminate and Lender shall notify the City of such payment in full. Upon such payment in full, the CID proceeds, if any, shall be deemed to be reassigned to the Borrower and the City shall pay all future CID proceeds the Borrower is entitled to receive under the Development Agreement to or at the direction of the Borrower.

4. Copies of Notices. The City hereby agrees to use reasonable efforts to provide to Lender, at the notice address for Lender set forth in the Loan Agreement, copies of all written notices and demands under the Development Agreement, any CID Agreement or otherwise with respect to the CID Rights sent or received by the City from or to Borrower. However, the parties understand and agree that the City shall not be in default or liable to Lender or Borrower if the City should fail to deliver any such notice.

5. Miscellaneous.

a. Capitalized words and phrases not otherwise defined in this Consent shall have the meanings assigned to such terms in the Agreement.

b. Lender neither assumes nor has any obligations to the City to exercise its rights under the Agreement or to declare an Event of Default, the option to exercise such rights or declare an Event of Default resting in the sole and absolute discretion of Lender. If Lender exercises its rights under the Agreement, the City agrees that Lender shall have no personal obligations or liabilities to the City with respect to the CID Rights or under any CID Agreement or the Ordinance, the City's recourse being limited to Lender's interest in the real estate which is the subject of the District.

c. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Kansas (without giving effect to the conflicts of law provisions thereof).

d. This Consent may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

e. Notwithstanding anything set forth herein which is seemingly to the contrary, nothing herein shall be deemed to amend, modify or waive any of the terms and conditions of the Development Agreement.

**[Remainder of page intentionally left blank. Signature page immediately follows.]**

**IN WITNESS WHEREOF**, the City has caused this Consent to be duly executed as of the year and date first set forth above.

**THE CITY OF OVERLAND PARK,  
KANSAS**

Attest:

By: \_\_\_\_\_  
Carl Gerlach, Mayor

\_\_\_\_\_  
Marian Cook, City Clerk

Approved as to Form:

\_\_\_\_\_  
Tammy M. Owens, Deputy City Attorney

Approved as to Form:

\_\_\_\_\_  
Todd A. LaSala, Esq., Stinson Morrison Hecker LLP

**95Q CORNER PROPERTIES, LLC,**  
a Kansas limited liability company

By: CWB Associates #3, Inc., a Missouri  
corporation, Manager

By: \_\_\_\_\_  
Keith Copaken, Vice President

**COUNTRY CLUB BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COLLATERAL ASSIGNMENT OF  
COMMUNITY IMPROVEMENT DISTRICT RIGHTS**

THIS COLLATERAL ASSIGNMENT OF COMMUNITY IMPROVEMENT DISTRICT RIGHTS (the “**Agreement**”) is made as of \_\_\_\_\_, \_\_\_\_\_, by **95Q CORNER PROPERTIES, LLC**, a Kansas limited liability company, having an address of c/o Copaken-Brooks, Town Pavilion, 1100 Walnut, Suite 2000, Kansas City, Missouri 64106 (“**Borrower**”) to and for the benefit of **COUNTRY CLUB BANK**, a Missouri banking corporation, and having its principal place of business at 4328 Madison, Kansas City, Missouri 64111 (“**Lender**”).

**RECITALS:**

A. Pursuant to that certain Loan Agreement dated as of the date of this Agreement (as the same may be amended, modified, supplemented or restated from time to time, the “**Loan Agreement**”), between Borrower and Lender, Lender has agreed to make a loan to Borrower in an amount up to \$9,300,000.00 (the “**Loan**”), which Loan is evidenced by that certain Promissory Note dated as of the date of this Agreement (as the same may be amended, modified, supplemented or restated from time to time, the “**Note**”).

B. The Loan is secured by, among other things, that certain Mortgage, Assignment, Security Agreement and Fixture Filing dated as of the date of this Agreement (as the same may be amended, modified, supplemented or restated from time to time, the “**Mortgage**”) whereby Borrower has granted to Lender a mortgage lien on certain real property located in Overland Park, Johnson County, Kansas, as more fully described in the Mortgage (the “**Property**”).

C. Pursuant to Ordinance No. CID-2940 (the “**CID Ordinance**”) adopted on November 7, 2011 by the City of Overland Park, Kansas (the “**City**”), the City approved the creation of the Quivira 95 Shops Community Improvement District (the “**District**”) and the construction of certain improvements (the “**CID Improvements**”) within the District. The District includes all of the Property.

D. On January 9, 2012, the City and Q95 Associates, L.P. (“**Original Developer**”) entered into that certain Development Agreement (the “**Development Agreement**”) with respect to the construction and financing of the CID Improvements. Original Developer has assigned to Borrower all of its rights and interests as developer under the Development Agreement.

E. As a condition to entering into the Loan Agreement with Borrower and making the Loan to Borrower, Lender requires that Borrower execute and deliver to Lender this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

1. Assignment and Security Interest. As additional security for the payment and discharge of all indebtedness, obligations, and liabilities of Borrower to Lender arising pursuant to or in connection with the Note, the Loan Agreement or any other Loan Document (all such

indebtedness, obligations, and liabilities being hereinafter collectively referred to as the “**Obligations**”), Borrower hereby collaterally assigns and grants to Lender a security interest in the following (collectively, the “**CID Rights**”): All of Borrower’s right, title and interest in and to any proceeds (whether by way of reimbursement of otherwise) pursuant to the CID Agreements (as hereinafter defined), whether now or hereafter existing, together with all of Borrower’s right, title and interest in and to the Development Agreement and any other development agreements, reimbursement agreements, promissory notes or other agreements evidencing obligations of the District to Borrower, whether now or hereafter existing, (such agreements, collectively, “**CID Agreements**”).

a. Borrower hereby agrees and directs that all proceeds payable to Borrower pursuant to the CID Agreements be paid or distributed by the City directly to Lender, to be applied by Lender to repayment of that portion of the principal balance of the Loan used to pay the cost of CID Improvements.

2. Covenants. Borrower hereby covenants and agrees to and with Lender as follows:

a. Borrower shall not perform any work or services on behalf of the District, or enter into any CID Agreement, or cause or permit any modification or amendment to any CID Agreement or the CID Rights, without Lender’s prior written consent.

b. Borrower shall promptly notify Lender, in writing of the occurrence of any default or event of default relating to the CID Rights, specifying the nature and existence of such default.

c. Borrower shall give notice to Lender in writing within ten (10) days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting the CID Rights and stating the nature and status of such litigation or proceedings.

d. Borrower shall keep true and accurate records and books of account, with respect to the CID Rights, in which full, true and correct entries will be made in accordance with generally accepted accounting principles and Borrower shall deliver to Lender, upon request, updated, complete and accurate copies of all accountings, statements, reports and communications from the City to Borrower with respect to the CID Rights and CID Agreements.

e. Other than the assignment and grant of security interest in favor of Lender as contemplated under this Agreement, Borrower will not (a) create or incur or allow to be created or incurred or to exist any lien, encumbrance, pledge, charge, restriction or other security interest of any kind upon any of the CID Rights whether now owned or hereafter acquired, or upon the income or profits therefrom; or (b) sell, assign, pledge or transfer any of the CID Rights or the income or profits thereof.

f. Borrower shall execute and deliver to Lender such further documents, instruments, assignments and other writings, and shall do such other acts necessary or desirable, to preserve and protect the CID Rights at any time securing or intended to secure the Obligations, as Lender may require. Without limiting the generality of the foregoing, Borrower

shall execute and deliver such additional assignments and grant such additional security interests with respect to the CID Rights and/or CID Agreements as Lender may require from time to time, and shall obtain and deliver to Lender such consents from the City with respect thereto as Lender may require.

3. Representations and Warranties. Borrower hereby represents and warrants to and with Lender as follows:

a. Borrower has full and complete right, power, and authority to pledge to Lender and to grant Lender a security interest in any and all of the CID Rights, whether standing in Borrower's name or not.

b. The execution and delivery of this Agreement will result in the valid and legally binding obligation of Borrower enforceable against Borrower and the CID Rights in accordance with the terms and provisions hereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

c. Borrower is the owner of the CID Rights free from any lien, security interest, encumbrance and any other claim or demand and the CID Rights are subject to no rights of others, including without limitation any sale agreements, liens or other encumbrances. The CID Rights and the rights of Lender with respect to the CID Rights are not subject to any setoff, claims, withholdings or other defenses. There are no financing statements, security agreements, chattel mortgages, or other documents filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in any of the CID Rights. Borrower will warrant and defend at Borrower's cost Borrower's right, title and interest in and to the CID Rights against the claim or claims of any and all others, it being understood by Borrower that Lender is specifically relying upon this warranty as material inducement in permitting Borrower to incur the Obligations.

4. Default. Borrower agrees that the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

a. the occurrence of any "Default or "Event of Default" under the Note, the Loan Agreement or any other Loan Document;

b. the breach or failure to perform by Borrower any obligation, covenant, promise or agreement contained herein and Borrower's failure to cure such breach or failure within thirty (30) days after written notice thereof from Lender;

c. the occurrence of any default or event of default by Borrower under any CID Agreement;

d. any tax levy, attachment, garnishment, levy of execution, or other process issued against Borrower or the CID Rights;

e. any lien or security interest is filed or created against the CID Rights (other than in favor of Lender as contemplated under this Agreement).

So long as there is no Event of Default, and subject to the terms of this Agreement, Borrower shall have and may exercise all rights as the owner or holder of the CID Agreements which are lawful and are not inconsistent with the provisions of the Loan Documents. Immediately upon the occurrence of any Event of Default, the rights described in the preceding sentence shall, at the election of Lender, cease and terminate, and in such event Lender is hereby expressly and irrevocably authorized, but not required, to exercise every right, option, power or authority inuring to Borrower under any CID Agreement or with respect to the CID Rights as fully as Borrower could itself. Borrower does hereby constitute and appoint Lender, while this Agreement remains in force and effect, irrevocably, and with full power of substitution and revocation, as its true and lawful attorney for and in its name, place and stead, after the occurrence of such an Event of Default to demand and enforce compliance with all the terms and conditions of any CID Agreement and the CID Rights, whether at law, in equity or otherwise. Further, and without limitation of the foregoing rights and remedies, upon an Event of Default, Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code (“UCC”), as enacted in the State in which the Property is located with respect to the CID Rights, in addition to the rights and remedies otherwise provided for herein or by law or in equity or in the Loan Agreement or any other Loan Document,

5. Notice. Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be made pursuant to the notice provision of the Loan Agreement.

6. Miscellaneous.

a. Capitalized words and phrases not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Loan Agreement.

b. Lender shall not be obligated to perform or discharge any obligation, duty or liability under any CID Agreement, the Ordinance or otherwise with respect to the CID Rights by reason of this Agreement, until its election as provided in Section 4 hereof, and this Agreement or Lender’s performance hereunder shall not release Borrower of any liability under any CID Agreement, the Ordinance or otherwise with respect to the CID Rights.

c. Any forbearance or failure or delay by Lender in exercising any right, power, or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power, or remedy hereunder shall not preclude the further exercise thereof; and every right, power, and remedy of Lender shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Lender.

d. The Loan Documents and any other documents executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except in writing.



e. The provisions of this Agreement shall be in addition to those of the Loan Agreement, the Loan Documents, and each and every other document delivered pursuant hereto, all of which shall be construed as complementary to each other. Nothing herein contained shall prevent Lender from enforcing the Loan Documents in accordance with their respective terms.

f. From time to time, Borrower will execute and deliver to Lender such additional documents and will provide such additional information as Lender may reasonably require to carry out the terms of this Agreement and be informed of Borrower's status and affairs.

g. The provisions of this Agreement are severable, and if any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is invalid, illegal, or unenforceable, shall not be affected or impaired thereby and each term, covenant, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In addition, if any provision hereof is found to be partially enforceable, then it shall be enforced to that extent.

h. This Agreement and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Kansas (without giving effect to the conflicts of law provisions thereof).

i. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not sell, assign or transfer any interest in this Agreement, or any portion thereof, including without limitation, Borrower's rights, title, interests, remedies, powers and duties hereunder or thereunder. Borrower hereby consents to Lender's participation, sale, assignment, transfer or other disposition, at any time or times hereafter, of this Agreement, or of any portion hereof or thereof, including, without limitation, Lender's rights, title, interests, remedies, powers and duties hereunder.

j. Captions contained in this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

k. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular and vice versa; (b) references to any person include such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; (c) references to one gender include all genders; (d) "including" is not limiting; (e) "or" has the inclusive meaning represented by the phrase "and/or"; (f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (g) section and subsection references are to this Agreement unless otherwise specified; (h) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; and

(i) references to any applicable law means such applicable law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time.

[Signature Page Follows)

**IN WITNESS WHEREOF**, Borrower has caused this Agreement to be executed as of the date first above written.

**95Q CORNER PROPERTIES, LLC,**  
a Kansas limited liability company

By: CWB Associates #3, Inc., a Missouri  
corporation, Manager

By: \_\_\_\_\_  
Keith Copaken, Vice President