

8/15/13 EXECUTIVE SUMMARY
HAWTHORNE PLAZA REDEVELOPMENT AGREEMENT

1. **Parties.** The City of Overland Park (the "City") and Hawthorne Plaza, LLC, a Kansas limited liability company (the "Developer").

2. **Nature of Agreement.** Generally, this is an agreement to create a community improvement district ("CID") on the existing shopping center located at the southwest corner of 119th Street and Roe Avenue, which is commonly known as "Hawthorne Plaza". Developer proposes to redevelop and construct certain improvements to Hawthorne Plaza (the "Project"), which could result in significant economic development, particularly from the construction of a new Container Store. The Agreement will provide for a 1% CID sales tax and for distributions of sales tax proceeds on a pay-as-you-go basis. Nothing in the Agreement obligates the City to issue any bonds.

3. **Developer's Project.** As further described in Section 2.01 of the Agreement, the Project includes the following improvements, a portion of which will be eligible for reimbursement through the CID (specifically those improvements described on Project Budget attached as Exhibit F):

a. **The Container Store.** The demolition of the existing restaurant building on the corner of 119th Street and Roe Avenue and the construction of a new retail 24,000 square foot retail building in its place to be leased to the Container Store.

b. **Pedestrian Amenities.** The redevelopment and construction of new sidewalks providing connectivity around and through Hawthorne Plaza and adjacent public right-of-ways, new patios and other outdoor public gathering places.

c. **Parking Improvements.** The redevelopment and upgrade of the parking lots servicing Hawthorne Plaza, including surface parking, site and parking drives and approaches, parking lot signage and striping, light poles and other lighting improvements for the parking lots, and retaining walls.

d. **New Signage Improvements.** The construction of new signage for Hawthorne Plaza, including a new monument sign on the corner of 119th Street and Roe Avenue that will say "Hawthorne Plaza – Overland Park, Kansas" or "Hawthorne Plaza of Overland Park, Kansas" or some other similar reference to the City.

e. **Building Exterior Improvements.** Improvements to the exterior of Hawthorne Plaza, including new facades, lighting, tenant signage, roofing, shopping center signage, and preparation of the restaurant space on the east side of the main building at Hawthorne Plaza for a new tenant.

f. New Art; Pocket Park. The design and completion of a "pocket park" located in front of the Tivol's building on 119th Street, which will include certain pedestrian amenities, such as art features, benches, and/or other public amenities.

g. Exterior Furnishings and Amenities. The installation of benches and other exterior furniture, trash receptacles and planters for the benefit and improvement of Hawthorne Plaza.

h. Infrastructure Improvements. The design, redevelopment and construction and completion of certain infrastructure improvements, including sewer, stormwater, electrical and water main improvements, along with other similar improvements.

4. **Performance Milestones and Completion.** As set forth on Exhibit G, Developer must commence remodeling of existing buildings no later than April 15, 2014; commence construction of the Container Store no later than July 15, 2014; and complete construction of all improvements eligible for reimbursement through the CID by no later than December 31, 2015.

5. **CID Financing.** Section 3.02 provides for the imposition of a CID sales tax in the amount of one percent (1%) on retail sales within the CID district. Section 3.02 also states that Developer's eligible improvements may be reimbursed with pay-as-you-go CID financing, consisting of revenues received from the CID sales tax from time to time. Additionally, the Hawthorne Plaza CID will be limited in a number of important ways:

(i) the CID collection period ends fifteen (15) years from the date that the CID sales tax is first imposed;

(ii) the maximum amount of CID reimbursements available to Developer is capped a \$5,376,040, and

(iii) the reimbursement of eligible expenses from pay-as-you-go CID financing are to be paid on a 50/50 basis between Developer's private funds and the available CID sales tax funds, and there shall not at any time during the Term be more Project costs paid with CID sales tax proceeds than the amount of Project costs paid by Developer's private funds.

6. **CID Reimbursement Conditions.** Section 3.05 provides for certain conditions that must be satisfied before Developer may receive any reimbursements from the pay-as-you-go CID financing, which include (i) completion of the Container Store, (ii) completion of the Pocket Park, and (iii) Developer must not be in default under the Agreement.

7. **Continuous Operations of the Container Store.** In Section 6.02(d), Developer agrees that its lease with the Container Store shall contractually require that the store open, fully stocked for at least one day. However, if the Container Store fails to continuously operate, then for the period of time the Container Store is closed, the City may withhold an amount equal to thirty-three percent (33%) of the reimbursements for eligible expenses from the CID that would otherwise be due to the Developer. Such "Withheld Reimbursements" would only be released

and paid to Developer when and if the Container Store (or a replacement operator/tenant which is reasonably approved by the City) re-opens in the building.

8. **Assignment Rights.** Pursuant to Section 5.02, the rights, duties and obligations of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City's governing body, in its sole discretion.

9. **Civic and Community Participation.** As set forth in Section 6.10, during the Term of the Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Overland Park, which, at a minimum, includes being a dues-paying member in good standing with (i) the Overland Park Chamber of Commerce, and (ii) the Overland Park Economic Development Council. Developer also agrees to make an annual donation to the Overland Park Arts and Recreation Foundation in an amount determined by the Developer, but not to be less than \$1,000 annually.

10. **Default and Remedies.** Article VII provides for a thorough default clause as well as specific remedies that the City may turn to in the event that Developer should fail to live up to its commitments in the Agreement. In particular, the parties agree that Developer will be in default if it (a) fails to pay money it owes under the Agreement, (b) fails to perform any of its obligations under the Agreement, (c) assigns the Agreement without the City's consent, or (d) declares bankruptcy. In the event of default, the City's remedies would include (i) the right to refuse to approve or make any further distributions of CID money unless and until the default is cured, (ii) the right to terminate the CID, (iii) the right to terminate the Agreement, (iv) the right to pursue any available remedy at law or in equity.

11. **Payment of City's Costs/Administrative Fee.** As set forth in Section 8.01, to the extent not covered by a separate funding agreement between the City and the Developer, the Developer will pay the reasonable legal fees of the City's attorneys incurred in connection with the creation, amendment and implementation of the CID and the Agreement, other related agreements, and any amendments thereto, and in connection with the review of certified expenditures for eligible expenses and the reimbursement of such eligible expenses. The Agreement also provides for a CID Administrative Fee in an amount equal to the greater of \$5,000 or 1% of the CID Sales Tax collected during any year of the Agreement.