

HAWTHORNE PLAZA REDEVELOPMENT AGREEMENT

THIS HAWTHORNE PLAZA REDEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this ____ day of _____, 2013 (the "Effective Date") by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City") and **HAWTHORNE PLAZA, LLC**, a Kansas limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property which is located in the City and is generally located on the southwest corner of 119th Street and Roe Avenue, which along with certain public right-of-way adjacent to such real property, is legally described on **Exhibit A** and generally depicted on **Exhibit B**, as attached hereto (the "Project Site").

B. There is currently an approximately 119,000 square foot shopping center located on the Project Site, which is commonly known as "Hawthorne Plaza." The Developer wishes to renovate and improve Hawthorne Plaza and therefore proposes to design, redevelop and construct certain improvements to Hawthorne Plaza as more particularly set forth in Section 2.01 below (the "Project").

C. The City has the authority to create a community improvement district ("CID") pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the "Act") for the purpose of financing certain economic development related projects. Under the Act, the owners of the land within the boundaries of a proposed CID may petition the City to request the creation of a CID and to impose special assessments and/or CID sales taxes ("CID Sales Tax") to pay for or reimburse the costs of a portion of a CID project.

D. On or about August 2, 2013, the Developer submitted a petition (the "CID Petition") to the City requesting the formation of a CID encompassing the Project Site. A copy of the Petition is attached hereto as **Exhibit C**. A legal description of the boundaries of the Hawthorne Plaza CID (the "District") is hereby set forth on **Exhibit D** attached hereto.

E. On _____, 2013, the City approved the creation of the District through the passage of Ordinance No. _____ (the "CID Ordinance") pursuant to the Act. As contemplated in the CID Petition, the CID Ordinance calls for the imposition of a CID Sales Tax of 1.0% within the District to be used to pay for and/or reimburse certain Project Costs (as defined in Section 3.01 below). The Ordinance specifies that the CID Sales Tax is to commence on _____, 201__, or any other effective date that the City may approve by ordinance if a change in the effective date is requested in writing by all owners of record in the District. The CID Ordinance is attached hereto as **Exhibit E**.

F. The parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the parties wish to enter into this Agreement to provide the necessary financing for the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I. DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement which are not otherwise defined herein shall have the meanings set forth in the Annex of Definitions attached hereto.

Section 1.03. 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:

(a) The terms defined in the attached Annex of Definitions include the plural as well as the singular.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

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

Section 1.04. Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation of this Agreement.

ARTICLE II. DEVELOPMENT OF THE PROJECT

Section 2.01. Redevelopment of the Project Site. The City and Developer hereby agree that the Project consists of the renovation of Hawthorne Plaza, including the CID Improvements and other improvements described in this Section 2.01 and as set forth on the Project Budget attached hereto and incorporated by reference herein as **Exhibit F**. Developer hereby contemplates that all buildings, parking facilities and other improvements constituting the Project, as set forth in this Section 2.01 and as set forth on **Exhibit F** (the "Improvements"), shall be developed, constructed, completed, and operated on the Project Site in substantial accordance and compliance with the terms and conditions of this Agreement and the Development Plan. On and subject to the terms and provisions set forth in this Agreement, Developer shall have the sole right to, and shall be responsible for, demolition, design, redevelopment, construction, equipment and completion of the Improvements, and shall operate and use the Improvements in the manner described herein, all in accordance with the terms of this Agreement and all other Applicable Laws and Requirements. Notwithstanding anything set forth herein to the contrary, the parties acknowledge and agree that Developer shall not be required to construct any improvements that are not set forth in the Development Plan. The parties further agree that, subject to any changes to the Development Plan, the "Project" shall include the following:

(a) **The Container Store.** The demolition of the existing restaurant building on the corner of 119th Street and Roe Avenue and the design, construction and completion of a new retail building in place thereof to be leased to the Container Store, with the new building comprising approximately 24,000 square feet.

(b) **Pedestrian Amenities.** The design, redevelopment, construction, and completion of new sidewalks providing connectivity around and through the Project Site, new patios and other outdoor public gathering places.

(c) **Parking Improvements.** The design, redevelopment and construction and completion of the parking lots servicing Hawthorne Plaza, including surface parking, site and parking drives and approaches, parking lot signage and striping, lighting improvements for the parking lots, including light poles, fixtures and electrical service thereto, certain parking lot island improvements, and retaining walls.

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

(e) **Building Exterior Improvements.** The design, redevelopment and construction and completion of improvements to the exterior of Hawthorne Plaza, including new facades, lighting, tenant signage, roofing, shopping center signage, and white box preparation for the restaurant space on the east side of the main building at Hawthorne Plaza.

(f) Landscaping and Irrigation. The design, redevelopment and construction and completion of the renovation and enhancement of existing landscaping, islands, medians and green space and irrigation systems benefiting Hawthorne Plaza, along with the design, redevelopment and construction and completion of certain new landscaping.

(g) New Art; Pocket Park. The design, construction and completion of that certain "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 (the "Pocket Park").

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

(i) 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.

Section 2.02. CID Improvements. Subject to the terms and conditions of this Agreement, Developer shall be responsible for funding the costs to construct the Project, including that portion of the Improvements and the Project that constitute the "CID Improvements." The CID Improvements, and the estimated costs thereof, are set forth in Exhibit F. A portion of the costs of the CID Improvements may be reimbursed to Developer as set forth in Article IV below. Other than such portion of the CID Improvements, the balance of the costs of completing the Project shall be funded by Private Funds (as defined in Section 3.01 below).

Section 2.03. Completion of the Project. Developer shall complete the Project, including the CID Improvements, in conformance with the Development Plan, zoning ordinances, related stipulations, City building codes, and all other applicable rules and regulations. Before commencement of construction or development of any and all buildings, structures or other work or improvement, 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. With respect to any reference in this Agreement to Developer's obligation to complete the Project, any such obligation refers to completion of the scope of work set forth in Section 2.01 and Exhibit F, and does not refer to the expenditure of any particular amount of funds for a specific line item or for all line items set forth thereon.

Section 2.04. Relationship of the City and Developer. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City.

Section 2.05. Project Timing – Milestones. Developer, subject to the terms of Section 7.07 hereof, agrees to construct the Project based upon the schedule set out and contained within Exhibit G, the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in Exhibit G, then the City may require Developer to appear before the City to show cause why Developer failed to comply with the Performance Milestones. If Developer cannot show cause for the delay which is reasonably satisfactory to the City, then the City may exercise its rights and remedies as set forth in Section 7.04 herein.

Section 2.06. Indemnification. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (each, a "City Indemnified Party" and collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the Project by Developer; (ii) the management, design, construction, development and completion of the Project, including the CID Improvements, by the Developer; (iii) the use or occupation of the Project by Developer or anyone acting by, through or under the Developer; (iv) damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on or about the District; (v) any breach, default or failure to perform by the Developer under this Agreement; (vi) any act by an employee of the City at or on the Project which is within or under the control of the Developer or pursued at Developer's request for the benefit of or on behalf of the Developer; (vii) the Developer's actions and undertaking in implementation of the Project or this Agreement; and (viii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor. The parties further agree as follows:

(a) This section shall not apply to negligence or willful misconduct of the City Indemnified Parties.

(b) This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.), (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, and any other Applicable Laws and Requirements at the Project Site or any other place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

(c) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, the City Indemnified Party shall give prompt notice to Developer of the occurrence of such event. The failure to notify Developer shall not relieve Developer of any liability that it may have to a City Indemnified Party; provided however that the City hereby agrees that it shall not defend, settle or otherwise resolve any such Actions without prior notice to Developer. After receipt of such notice, Developer may elect to defend, contest or otherwise protect a City Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel approved by a City Indemnified Party. The City Indemnified Party shall have the right, but not the obligation, to participate, at the City

Indemnified Party's own cost and expense, in the defense thereof by counsel of the City Indemnified Party's choice. In the event that Developer shall fail to timely defend, contest or otherwise protect a City Indemnified Party against such Action, the City Indemnified Party shall have the right to do so, and if such defense is undertaken by the City Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest or otherwise protect against such Action, the City Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer and, within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the City Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(d) A City Indemnified Party shall submit to Developer any settlement proposal that the City Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the City Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(e) Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce the City to enter into this Agreement. To the fullest extent permitted by law, a City Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the City Indemnified Party in payment of the damages suffered by it, as is necessary to protect the City Indemnified Party from loss. If such court action is successful, the City Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(f) The right to indemnification set forth in this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

Section 2.07. Insurance.

(a) Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the Term, 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 (if applicable), general liability and employee dishonesty (if applicable)) and in such amounts as are adequate to protect the Developer and the Project which amounts shall not be less than those set forth on **Exhibit K** attached hereto. Throughout the Term, the

Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance ("Certificate") listing all coverages applicable to the Project.

(b) The Developer shall require of the contractor(s) hired to perform work on any public infrastructure to fully comply with the following insurance requirements:

(i) General: The contractor shall secure and maintain, for at least two years following completion of the contractor's public infrastructure work on the Project Site, insurance (on an occurrence basis unless otherwise agreed by the City and Developer) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on Acord forms 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 of insurance.

(ii) 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.

Developer shall also cause the contractor to monitor and to promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate of insurance 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 cause the contractor to promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

(iii) General Liability:

Minimum 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) Broad Form Contractual / Contractually Assumed Liability
- (3) Independent Contractors
- (4) Broad Form Property Damage

(5) NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

(iv) 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.

Minimum Limits

Combined Single Limits, Bodily Injury and Property Damage -
Each Accident: \$1,000,000

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

(v) Umbrella Liability: The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Minimum Limits –

Each Occurrence: \$1,000,000
General Aggregate: \$1,000,000

(vi) Workers' Compensation: This insurance shall protect the contractor against all claims under applicable state workers' compensation laws. The contractor 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.

Minimum Limits –

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

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

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of A- or better; and
- (3) Carries at least a Class VIII financial rating, **or**
- (4) Is a company mutually agreed upon by the City and Contractor.

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

(1) Require the contractor to 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, Developer shall cause the contractor to 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.

Section 2.08. Non-Discrimination. The Developer agrees that throughout the Term:

(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 City;

(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 City; and

(e) The Developer shall include the provisions of Sections 2.08(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

The Developer further agrees that throughout the Term, 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. 12101 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.

ARTICLE III. CID FINANCING

Section 3.01. Source of Funds. The costs of the Project (the “Project Costs”) will be funded by private equity and debt (“Private Funds”). Subject to the terms and conditions of this Agreement, the CID Improvement Costs shall be reimbursed with CID Sales Tax proceeds, subject to the terms and conditions set forth herein. Reference is hereby made to the CID Improvement Costs which are more particularly set forth on **Exhibit F** attached hereto. Developer, using Private Funds, will initially advance all of the costs for the design, development and construction of the CID Improvements. Developer, subject to the terms and conditions of this Agreement, including the CID Cap set forth in Section 3.04 below, shall be reimbursed for the CID Improvement Costs from and to the extent of the CID Sales Tax proceeds collected during the Term.

Section 3.02. CID Sales Tax. The City hereby agrees that the CID Improvements may be reimbursed with Pay-As-You-Go CID Financing (as defined below), consisting of revenues received from the imposition of a CID Sales Tax in the amount of one percent (1%) on the sale of tangible personal property at retail or the rendering or furnishing of services which are taxable pursuant to the Kansas Retailers' Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the District. The Developer agrees to provide to the Kansas Department of Revenue (the “DOR”) a list of tenants within the District within the timeframes required by the DOR, so that the DOR can notify tenants within the District of their requirement to collect a CID Sales Tax beginning on that certain date which is set forth in Recital E of this Agreement. At the time the list of tenants is provided to the DOR, the Developer shall also provide a copy to the City.

Section 3.03. CID Sales Tax Fund. During the Term, all CID Sales Tax proceeds generated within the District and received by the City from DOR shall be deposited into the CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Agreement.

Section 3.04. Pay-As-You-Go CID Financing. The parties hereby agree that the proceeds from the CID Sales Tax shall be disbursed by the City quarterly from the CID Sales Tax Fund on a pay-as-you-go basis (“Pay-As-You-Go CID Financing”), to reimburse Developer for Eligible Expenses, if and to the extent that (i) there are CID Sales Tax proceeds in the CID Sales Tax Fund, (ii) Developer has fully satisfied all of the conditions set forth in Section 3.05 hereof, (iii) the Term has not yet expired, and (iv) Developer has not already been reimbursed for Eligible Expenses in an amount equal to the CID Cap (as defined below), and Developer is not in default under the terms and conditions of this Agreement beyond all notice and cure periods provided herein. The parties further agree as follows:

(a) The CID Sales Tax available to Developer for reimbursement of Eligible Expenses at any given time shall be limited to an amount which is equal to one half (1/2) of the amount of Project Costs which have been paid by Developer for the Project from Private Funds. In other words, 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 (the “50/50 Limitation”). However, the

parties understand and agree that for purposes of this provision, Developer's Private Funds which are spent on developer fees, commissions, marketing costs, legal fees, engineering, construction period interest and other "soft costs" and financing costs shall not be included in the calculation of Private Funds for purposes of calculating the 50/50 Limitation. By way of illustrative example of the 50/50 Limitation, if at a given point in time, Developer has incurred Project Costs (including any Eligible Expenses) to date of \$200, then Developer's maximum reimbursement for Eligible Expenses from Pay-As-You-Go CID Financing may not exceed \$100. However, the parties further understand and agree that if at a given point in time, Developer has incurred \$225 of Project Costs, of which \$125 are Eligible Expenses and \$100 are paid from Private Funds (other than legal fees and/or construction period interest), then (i) at that particular time, no more than \$100 of Eligible Expenses may be reimbursed with CID Sales Tax Proceeds, but (ii) if Developer later incurs an additional \$25 of Project Costs which are paid with Private Funds, then the remaining \$25 of Eligible Expenses may be reimbursed with CID Sales Tax Proceeds. Payment of Project Costs from Private Funding shall be evidenced to the City as set forth in Section 4.02(b).

(b) In addition to the 50/50 Limitation, the CID Sales Tax available to Developer for reimbursement of Eligible Expenses shall in no event exceed Five Million Three Hundred Seventy-Six Thousand and Forty Dollars (\$5,376,040) (the "CID Cap"). The CID Cap shall, for all purposes set forth herein, operate as a cap on the use of CID Sales Tax for reimbursement of any and all Eligible Expenses. Once Developer has received an amount equal to the CID Cap for reimbursement of Eligible Expenses through Pay-As-You-Go CID Financing, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be levied or collected within the District.

(c) The CID Sales Tax shall be collected within the District for a period that commences on the date that the CID Sales Tax is first imposed within the District up to and concluding upon that date which is the earlier of the following: (i) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing (up to the CID Cap), or (ii) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is fifteen (15) years from the date that the CID Sales Tax is first imposed (the "CID Collection Period"). At the end of the CID Collection Period, the parties understand and agree that the CID shall thereafter terminate, and the CID Sales Tax shall terminate and no longer be levied or collected within the District.

(d) Developer shall not receive any reimbursements from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth in Section 3.05 have been fully satisfied as determined by City in its sole reasonable discretion.

Section 3.05. Conditions Precedent to Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for Eligible Expenses from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

(a) City has approved Certificates of Expenditure for such CID Improvement Costs;

(b) Construction of the Container Store described in Section 2.01(a) shall be completed, and the Container Store shall be fully stocked and opened for business for at least one day;

(c) Construction of the Pocket Park as described in Section 2.01(f) shall be completed; and

(d) Developer shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder.

Section 3.06. Additional Conditions to Reimbursements for the Container Store. In addition to the condition set forth in Section 3.05(b) above, the parties hereby agree that if at any time the Container Store (or some other replacement operator which is reasonably approved by the City) shall fail to continuously operate from the building described in Section 2.01(a), then for any period of time that such store is closed, the City may withhold an amount equal to thirty three percent (33%) of the reimbursements for Eligible Expenses from Pay-As-You-Go CID Financing that would otherwise be due to the Developer (the "Withheld Reimbursements"). The City shall retain and hold such Withheld Reimbursements in the CID Sales Tax Fund until such time as the Container Store (or some other replacement operator which is reasonably approved by the City) shall re-open in the building described in Section 2.01(a), at which time all of the Withheld Reimbursements shall be paid to the Developer. However, the parties hereby agree that if any such store shall close prior to the end of the CID Collection Period and remain closed at the end of the CID Collection Period, the City will continue to retain and hold the Withheld Reimbursements for a period of up two (2) years after the end of the CID Collection Period, and the parties agree that: (a) if the Container Store (or some other replacement operator which is reasonably approved by the City) shall re-open in the building described in Section 2.01(a) at any time prior to the end of such two (2) year period, then the City shall pay all of the Withheld Reimbursements to the Developer, and (b) if such store shall not re-open within such two (2) year period, then the Developer shall thereafter lose any right or interest in and to reimbursement from all or any portion of the Withheld Reimbursements, which amounts shall be forfeited to the City.

Section 3.07. No CID Bonds. Developer hereby understands and agrees that all reimbursements to the Developer hereunder shall be made only from Pay-As-You-Go CID Financing, and nothing in this Agreement shall in any way obligate the City to issue bonds or other obligations to reimburse Developer for the Eligible Expenses or any other costs of the Project.

Section 3.08. Payment of CID Administrative Fee. As and when there are sufficient CID Sales Tax revenues from the District to pay the CID Administrative Fee, Developer hereby understands and agrees that such CID Administrative Fee shall have first priority to available funds in the CID Sales Tax Fund.

**ARTICLE IV.
CID REIMBURSEMENT**

Section 4.01. CID Reimbursement. Subject to Article III of this Agreement, CID Sales Tax shall be used to reimburse the Developer for the Eligible Expenses, as described in **Exhibit E**, by Pay-As-You-Go CID Financing, and in all events in accordance with the terms of this Agreement. In no event will the reimbursement described hereunder exceed the CID Cap.

Section 4.02. Certificate of Expenditures. In connection with the Eligible Expenses for the CID Improvements, Developer shall certify all costs and expenditures in accordance with the following:

(a) The Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as **Exhibit H** setting forth the amount for which reimbursement is sought and an itemized listing of the related CID Improvement Costs. Prior to or concurrently with the first Certificate of Expenditure submitted by Developer 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:

(i) A scalable "General Layout" plan sheet showing the general layout and location of the CID eligible Expenses. Non-eligible items shall be clearly differentiated from eligible items.

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

(iii) Copies of certified bid tabulations or contracts verifying the contractor's bid on eligible items. Such tabulations or contracts must clearly differentiate items by eligible and non-eligible items.

(b) Each Certificate 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 (i.e., 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. Each Certificate of Expenditure shall also be accompanied by an updated Project Budget as set forth on **Exhibit F** including any changes permitted by Section 4.03 below.

(c) Each Certificate of Expenditure shall also include evidence of payment and cost breakdowns for Project Costs paid with Private Funds in an amount which is at least equal to the reimbursements requested from CID Pay-As-You-Go Financing reimbursements in the Certificate of Expenditure, plus any prior Certificates of Expenditure in order to satisfy the 50/50 Limitation.

(d) The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certificate of Expenditure is submitted, to examine the Developer's and other's records relating to all costs of CID

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 subsection (d).

(e) The City shall have sixty (60) calendar days after receipt of any Certificate of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certificate of Expenditure directly relates to the CID Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement beyond all notice and cure periods provided herein; (4) the expense is not prohibited by the terms and conditions of Section 3.04 hereof; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certificate of Expenditure and reimburse the Developer for financing the cost of the CID Improvements pursuant to the terms of this Agreement. If the City disapproves of the Certificate of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such sixty (60) day period.

(f) Within one-hundred eighty (180) days of execution of this Agreement, the Developer shall submit Certificates of Expenditure for those expenditures made prior to the execution of this Agreement in connection with the CID Improvements, if any. During the Term, the Developer shall endeavor to submit Certificates of Expenditure for those expenditures made in connection with the CID Improvements on a quarterly basis, and shall submit a Certificate of Expenditure for any expenditure made in connection with a CID Improvement within one-hundred eighty (180) days of making such expenditure.

Section 4.03. Line Items. The parties hereby agree that increases in line item amounts in the column labeled "CID" in the Project Budget as set forth on **Exhibit F** may be made by Developer as long as (a) no such increase represents more than a 15% change per line item, and (b) Developer provides the City Manager's office with prior written notice of such change. No increase will be effective without such notice to the City Manager's office and a modified Project Budget reflecting such change. Additionally, in the event the Developer wants to increase one or more such line items in the Project Budget in excess of 15% per line item, then any such modifications may be requested by Developer in writing and must be approved by the City Manager's office. However, no such changes, whether increases or decreases, shall be permitted within the category labeled "Building Exterior Improvements" or "Tenant Improvement Costs" on the Project Budget set forth on **Exhibit F**.

ARTICLE V. ASSIGNMENT AND TRANSFER

Section 5.01. Assignments by Developer. The rights, duties and obligations hereunder 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, following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Project and/or this Agreement being transferred. Any proposed assignee shall, by instrument

in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Project, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Department of Records and Tax Administration of Johnson County, Kansas, in a timely manner following the execution of such agreements.

Section 5.02. Successors and Assigns. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the Project shall be bound by any obligation of the Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within the Project except the Developer shall be entitled to any rights whatsoever or claim upon the reimbursements from the CID Sales Tax, except as specifically authorized in writing by the Developer and the City.

Section 5.03. Excluded Encumbrances and Transfers. The foregoing restrictions in this Article V shall not apply to (i) any security interest granted to secure indebtedness to any construction or permanent lender, (ii) the rental and leasing of portions of the Project Site in the ordinary course of Developer's business for the uses permitted under the terms of this Agreement; (iii) any transfer of some or all of the rights and/or obligations under this Agreement to a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer (an "Affiliate"), provided that any such Affiliate shall have a net worth which is equal to or greater than that of the Developer immediately prior to such transfer; or (iv) transfer of the Property. Developer hereby agrees to provide the City with written notice of any assignment or transfer permitted by this Section 5.03 within ten (10) days after such assignment or transfer.

ARTICLE VI. USE AND OPERATION OF THE PROJECT

Section 6.01. Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the last day of the CID Collection Period (the "Term"). Notwithstanding anything to the contrary herein, the City hereby agrees that at any time prior to the implementation of the CID Sales Tax or following Developer's Substantial Completion of the CID Improvements, Developer may terminate this Agreement by thirty (30) days prior written notice to the City. Upon any such termination by Developer, the parties hereby agree that (i) the City may terminate the CID and/or the CID Sales Tax, and Developer shall have no further rights to any proceeds or reimbursements therefrom, and (ii) neither party shall have any further obligations under this Agreement, except to the extent set forth in Section 8.12 hereof.

Section 6.02. Use and Operation. Developer covenants that at all times during the Term it will, at its expense:

(a) Conduct its business at all times in a dignified quality manner and in conformity with the industry standards for similar facilities and in such manner as to maximize sales and/or rentals and to help establish and maintain a high reputation for the Project.

(b) Perform its duties to maintain the Project and the District as set forth in Section 6.03 hereof.

(c) Perform its duties set forth in Section 6.07 hereof.

(d) Developer hereby agrees to secure a contractual commitment from the Container Store to stock and open for at least one day (the "Container Store Covenant").

(e) Developer hereby understands and agrees that the nature of the shopping center to be redeveloped pursuant to this Agreement was critical to the approval of the same. Accordingly, the parties hereby agree that the following uses shall be prohibited within the Project:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the shopping center. No oil, gasoline or flammable liquid shall be stored within the District.

(ii) A gas station or car wash.

(iii) A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.

(iv) Any pawn shop or flea market.

(v) Any store selling discounted tobacco products or tobacco-smoking paraphernalia.

(vi) Pay-day or title loan facilities.

(vii) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building within the District.

(viii) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion within the District to determine its own selling prices nor shall it preclude second-hand sales or the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(ix) Any central laundry, or laundromat; provided, however, this prohibition shall not be applicable to a drop-off and pickup facility, or a central laundry or laundromat that complies with CERCLA, RCRA and other Applicable Laws and Requirements (as defined herein).

(x) Any automobile, truck, trailer or recreational vehicle with outside sales, leasing, or display unless approved by the City or in conjunction with promotions, displays and other similar marketing activities, subject, however, to compliance with all Applicable Laws and Requirements.

(xi) Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles.

(xii) Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; except that this provision shall not be deemed to preclude the operation within the District of either a nationally or regionally recognized book store, or a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xiii) Any seasonal tax preparation facilities.

(xiv) Any precious metals facilities.

The governing body of the City may grant variances to the restrictions set forth in this Section 6.02(e) from time to time in its sole and absolute discretion. Within ten (10) days of the Effective Date, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 6.02(e) and record the same against the real property within the District, which restrictions shall be effective and run with the land for the Term of this Agreement.

Section 6.03. Maintenance and Use. During the Term, Developer shall cause the CID Improvements, the Project and all other of its property used or useful in the conduct of its business and operations within the District, to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated "Class A" retail space in the greater metropolitan Kansas City area, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations within the District. Nothing in this Section 6.03 shall preclude Developer from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business, and as long as the same does not materially adversely affect the value of the Project or Developer's ability to (i) perform its obligations under this Agreement, or (ii) generate CID Sales Taxes within the District. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, this Agreement, the Development Plan, and as long as the same do not materially adversely affect the value of the Project or Developer's ability to perform its obligations under this Agreement, or generate CID Sales Taxes within the District. Without limiting the generality of the foregoing, Developer hereby understands and agrees that it shall execute, deliver and fully comply with the terms and conditions of that certain Covenant to Maintain Private Parking Facilities, the form of which is attached hereto as **Exhibit I**. Notwithstanding anything set forth herein which is seemingly to the contrary, the provisions in this Section 6.03 shall not be deemed to give the City any right to approve, consent to or restrict the Developer's rights to lease the

Project, or portions thereof, to any particular retail tenants, except as set forth in Section 6.02(e) above.

Section 6.04. Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any government authorities applicable to the conduct of their business and operations and the ownership of the Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any government authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement.

Section 6.05. Payment of Taxes and Liens. The Parties hereby agree as follows:

(a) During the Term of this Agreement, Developer and its Affiliates shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Developer shall fail to pay all such applicable real estate taxes and assessments, the parties understand and agree that the City may suspend all reimbursements of Eligible Expenses through Pay-As-You-Go CID Financing during any time that such real estate taxes and assessments on the property the Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliates from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer or its Affiliates shall pay any and all amounts that are contested under protest while any such proceedings are pending. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's property within the District.

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the Project or the property within the District, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 6.06. Licenses and Permits. Developer hereby recognizes, stipulates and agrees (a) that in the design, construction, completion, use or operation of the Project, Developer, or its general contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

Section 6.07. Damage or Destruction. If, at any time during the Term, the Project or any part thereof shall be damaged or destroyed by a casualty (the "Damaged Facilities"), Developer, shall either (a) at its sole cost and expense, commence and thereafter proceed as promptly as possible to repair, restore or replace the Damaged Facilities with a development of comparable quality, or (b) if Developer elects not to rebuild pursuant to Section 6.07(a) above, then (i) the City may terminate the CID and/or the CID Sales Tax, and Developer shall have no further rights to any proceeds or reimbursements therefrom, and (ii) Developer shall repay the City the amount of CID Sales Tax actually received by the Developer (not to exceed the amount of insurance proceeds actually received by Developer, net of any deductible), and after such repayment to the City, this Agreement shall terminate upon written notice by the City to the Developer.

Section 6.08. Access. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Nothing contained in this Section 6.08 shall restrict or impede the right of the City to enter the District pursuant to any Applicable Laws and Requirements.

Section 6.09. Periodic Meetings with the City. From the Effective Date until substantial completion of the Project, Developer hereby agrees that Developer's representative will meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project. At any time during the Term of this Agreement, Developer hereby agrees to reasonably respond to requests for information from the City or its representatives about the Project.

Section 6.10. Civic and Community Participation. During the Term of this Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Overland Park. Accordingly, at a minimum, Developer shall (a) at all times be a dues-paying member in good standing with (i) the Overland Park Chamber of Commerce, and (ii) the Overland Park Economic Development Council, and (b) Developer shall make an annual donation to the Overland Park Arts and Recreation Foundation in an amount determined in the sole discretion of Developer, but not to be less than \$1,000 annually.

Section 6.11. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

ARTICLE VII. DEFAULTS AND REMEDIES

Section 7.01. Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after

Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

Section 7.02. Developer's Remedies Upon Default by the City. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote, punitive or consequential damages. The City's liability hereunder shall also be limited by Applicable Laws and Requirements.

Section 7.03. Default by Developer. Developer shall be in default under this Agreement if:

(a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within ten (10) days after the City has given Developer written notice specifying such default; or

(b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(c) Without limiting the generality of the foregoing, Developer shall assign or transfer the Project and/or this Agreement in violation of the terms and conditions set forth in Article V; or

(d) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Developer whereupon the District, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subsection being deemed a default under the provisions of this Agreement); or

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days of notice from the City.

Section 7.04. City's Remedies Upon Default by Developer. Upon the occurrence and continuance of a Developer default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of CID Sales Tax unless and until such default is cured by the Developer, and/or (ii) terminate the CID and/or the CID Sales Tax, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement. The rights and remedies reserved by the City under this Section 7.04 shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

(b) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default.

(c) In the event of such default by Developer, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies.

Section 7.05. Legal Actions.

(a) 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.

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

(c) Acceptance of Service of Process.

(i) 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.

(ii) 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.

Section 7.06. 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.

Section 7.07. Excusable Delays; Extension of Times of Performance.

(a) 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 events beyond the reasonable control of the party such as but not limited to: default of other party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform ("Excusable Delays").

(b) The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. Developer shall provide notice to the City if and when any such Excusable Delays occur and Developer may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. In the case of any extension sought by Developer for any other reason which will cause a failure to timely complete a portion of the Project as set forth on Exhibit G hereto, such extension shall only be granted with the approval of City, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse Developer from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing.

**ARTICLE VIII.
GENERAL PROVISIONS**

Section 8.01. Expenses and CID Administrative Fee. To the extent not covered by the Funding Agreement entered into by and between the City and the Developer prior to the Effective Date, the Developer shall be responsible for and pay, within thirty (30) days of invoice, the reasonable legal fees of the City's attorneys incurred in connection with the creation, amendment and implementation of the CID and this Agreement (including the negotiation of this 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, pursuant to the terms of Section 3.01. Additionally, the CID Sales Tax shall be used to pay the CID Administrative Fee. The CID Administrative Fee shall be due on the date the CID Sales Tax is received by the City from DOR (provided that the Act permits payment directly from the CID Sales Tax, and if not, within thirty (30) days of demand therefor by the City).

Section 8.02. 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.

Section 8.03. 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.

Section 8.04. Immunity of Officers, Employees and Members of the City and Developer. No personal recourse shall be had for the payment of the Pay-As-You-Go CID Financing 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 or the Developer or its Affiliates, 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 or Developer or its Affiliates shall be personally liable under this Agreement for a default or breach by the City or Developer, as the case may be.

Section 8.05. 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 Project as pertinent to the purposes of this Agreement.

Section 8.06. 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.

Section 8.07. 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.

Section 8.08. 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 CID Ordinance, the CID Ordinance is controlling.

Section 8.09. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To the Developer:

Hawthorne Plaza, LLC
c/o CBRE – Asset Services
4717 Grand Avenue, Suite 500
Kansas City, MO 64112
Attn: Doug Grossenbacher

and

Hawthorne Plaza, LLC
c/o Invesco Real Estate
13155 Noel Road
Three Galleria
Suite 500
Dallas, Texas 75240
Attn: Terrell L. Weatherl

With copies to:

Curt Petersen, Esq.
Polsinelli Shughart PC
6201 College Blvd., Suite 500
Overland Park, KS 66211

(b) To the City:

William Ebel, Jr., 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

Tammy M. Owens, Deputy 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.

Section 8.10. 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.

Section 8.11. Agreement Runs With the Land; Recording. The parties understand and agree that this Agreement runs with the land. Additionally, the Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, or a memorandum thereof, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Johnson County, Kansas. This Agreement, or a memorandum of this Agreement, shall be promptly recorded by the Developer at Developer's cost after execution, and proof of recording shall be provided to the City.

Section 8.12. 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.

Section 8.13. 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.

Section 8.14. Tax Implications. The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

Section 8.15. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

Section 8.16. 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; provided, however, nothing herein is intended to bind a future Governing Body of the City in a manner prohibited by the laws of the State of Kansas.

Section 8.17. Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1100 *et seq.*), the Budget Law (K.S.A. § 79-2935 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

Section 8.18. Estoppel. Within fifteen (15) business days of the City's receipt of a written request from Developer, the City shall provide a written estoppel in a form mutually acceptable to the City and Developer that, at a minimum, states whether the Developer is in default under this Agreement, the Covenant to Maintain Parking Facilities, and any other written agreements between the parties related to the Project Site.

Section 8.19. Certificate of Substantial Completion. Upon Developer's Substantial Completion of the Project, the City shall issue a Certificate of Substantial Completion stating that Developer has satisfied its obligation to complete the Project for purposes of this Agreement. Such Certificate shall be in recordable form.

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

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

CITY OF OVERLAND PARK, KANSAS

ATTEST:

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

ANNEX OF DEFINITIONS

The following terms have the following meanings:

"Act" means K.S.A. 12-6a26 through 12-6a36 and all additions and amendments thereto.

"Action" means any suit, action, investigation, claim or proceeding in which the Developer may become obligated to one or more of the City Indemnified Parties as set forth in Section 2.06(c) hereof.

"Affiliates" means a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer as set forth in Section 5.03 hereof.

"Agreement" means this Hawthorne Plaza Shopping Center Development Agreement, as the same may be amended from time to time in accordance with the terms and conditions hereof.

"Applicable Laws and Requirements" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by government authorities, and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the Development Plan, the Act, the Kansas Cash Basis Law (K.S.A. § 10-1100, et. seq.) and Budget Law (K.S.A. § 75-2935 et. seq.).

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. as referred to in Section 2.06(a) hereof.

"CID" means a community improvement district pursuant to the Act.

"CID Administrative Fee" means an amount equal to the greater of \$5,000 or 1% of the CID Sales Tax proceeds deposited into the CID Sales Tax Fund hereunder from time to time during the Term.

"CID Cap" means the limitation on the amount of CID Sales Tax available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.04(b) hereof. The CID Cap is \$5,376,040.

"CID Collection Period" means the period that commences on the date that the CID Sales Tax is first imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing, or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is fifteen (15) years from the date that the CID Sales Tax is first imposed, as set forth in Section 3.04(c) hereof.

"CID Improvements" means that portion of the Project, the costs of which are Eligible Expenses and reimbursable with Pay-As-You-Go CID Financing hereunder, subject to the CID Cap. The CID Improvements, and the estimated costs therefor, are set forth on **Exhibit F** hereto.

"CID Ordinance" means Ordinance No. _____, adopted by the City on _____, 2013 as referenced in Recital E hereof and attached hereto as **Exhibit E**.

"CID Petition" means that certain petition submitted by the Developer on or about August 2, 2013, a copy of which is attached hereto as **Exhibit C**.

"CID Sales Tax" means the tax authorized by K.S.A. 12-6a31 and amendments thereto, and as more particularly described in Section 3.02 hereof.

"CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State collected within the District, and that is used to finance the CID Improvements pursuant to the Act as set forth in Section 3.03 hereof.

"CID Improvement Costs" means the costs for construction and completion of the CID Improvements, as estimated on **Exhibit F** hereto.

"City" means the City of Overland Park, Kansas.

"City Indemnified Parties" means the City, its employees, agents, independent contractors and consultants, collectively for purposes of the indemnification provisions set forth in Section 2.06 hereof.

"Commission" means the Kansas Human Rights Commission as referred to in Section 2.08(b) hereof.

"Container Store" means that certain retail store described in Section 2.01(a) hereof.

"Container Store Operating Covenant" means the obligation of the Container Store to stock and open for business for at least a day as set forth in Section 6.02(d) hereof.

"Damaged Facilities" means the Project or any part thereof being damaged or destroyed by a casualty.

"Developer" means Hawthorne Plaza, LLC, a Kansas limited liability company.

"Development Plan" means the preliminary development plan and the final development plan for the Project approved by the City, as such plans may be modified or revised in accordance with the Unified Development Ordinance of the City of Overland Park and approved by the City from time to time.

"District" means the community improvement district generally described in Recital D and the legal description of which is more particularly set out in **Exhibit D** attached hereto.

"DOR" means the Kansas Department of Revenue as set forth in Section 3.02.

"Effective Date" means _____, 2013.

"Eligible Expenses" means those CID Improvement Costs that are "costs" or a "project" (as defined in the Act) and thus eligible for reimbursement with CID Sales Tax proceeds under the Act.

"Excusable Delays" means the delays for performance set forth in Section 7.07 hereof.

"50/50 Limitation" means the limitation on reimbursement of Eligible Expenses from Pay-As-You-Go Financing set forth in 3.04(a) hereof, which limitation requires reimbursements to be paid on a 50/50 basis between Developer and the available CID Sales Tax funds.

"Hawthorne Plaza" means the retail shopping center project generally located on the southwest corner of 119th Street and Roe Avenue, Overland Park, Kansas, as referred to in Recital B hereof.

"Improvements" means those buildings, parking structures and other improvements constituting the Project as set forth in Section 2.01 and on **Exhibit F** hereof.

"Parties" means the City and Developer.

"Pay-As-You-Go CID Financing" means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the CID Improvements are financed without notes or bonds, and the costs are reimbursed as CID Sales Tax is deposited in the CID Sales Tax Fund as set forth in Section 3.04 hereof.

"Performance Milestones" means Developer's anticipated development milestones for the Project which are set forth on **Exhibit G** attached hereto.

"Private Funds" means private equity and debt to be used to pay Project Costs as set forth in Section 3.01 hereof.

"Project" means the Improvements to Hawthorne Plaza, including the CID Improvements to be designed, developed, constructed and completed by Developer as described in Section 2.01 hereof and on **Exhibit F** attached hereto.

"Project Budget" means the estimated budget for the Project, which includes the CID Improvements and estimated costs thereof, as set forth on **Exhibit F** attached hereto.

"Project Costs" means the costs of designing, developing, constructing and completing the Project, including both those Eligible Expenses to be paid with Pay-As-You-Go CID Financing, and those costs to be funded solely with Private Funds.

"Project Site" means that certain real property which is located in the City and is generally located on the southwest corner of 119th Street and Roe Avenue, which along with certain public right-of-way adjacent to such real property, is legally described on **Exhibit A** and generally depicted on **Exhibit B**, as attached hereto.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.06(b) hereof.

"State" means the State of Kansas.

"Substantial Completion" means the stage in the progress of the construction of improvements, or as to any particular portion thereof, when said construction is sufficiently complete so that the improvements or such particular portion can be occupied or utilized for its intended use provided however that finished shell space which is suitable for future tenant improvements shall be considered substantial completion.

"Term" means that certain period from the Effective Date through that date on which this Agreement expires as set forth in Section 6.01 hereof.

"Withheld Reimbursements" means an amount equal to thirty three percent (33%) of the reimbursements for Eligible Expenses from Pay-As-You-Go CID Financing that would otherwise be due to the Developer which may be retained and withheld by the City pursuant to Section 3.06 if the Container Store (or some other replacement operator which is reasonably approved by the City) shall fail to continuously operate from the building described in Section 2.01(a).

EXHIBITS

- Exhibit A: Project Site Legal Description
- Exhibit B: Project Site Map
- Exhibit C: CID Petition
- Exhibit D: CID Legal Description
- Exhibit E: CID Ordinance
- Exhibit F: Project Budget
- Exhibit G: Performance Milestones
- Exhibit H: Form of Certificate of Expenditure
- Exhibit I: Covenant to Maintain Parking Facilities
- Exhibit K: Insurance Specifications

EXHIBIT A
PROJECT SITE LEGAL DESCRIPTION

EXHIBIT B
PROJECT SITE MAP

EXHIBIT C
CID PETITION

EXHIBIT D
PROJECT SITE LEGAL DESCRIPTION

EXHIBIT C-2

EXHIBIT E
CID ORDINANCE

EXHIBIT F
PROJECT BUDGET

	CID	% of %of CAT	% of CID	Private Investment	% of CAT	% of PRIV	Total Cost of Improvements	% of TOT
PROJECT COSTS								
Parking Lots, Drives & Lighting Improvements								
Sitework (including retaining walls)	\$ 270,000			\$ 269,600			\$ 539,600	
Parking Lots and Drive Approaches	\$ 340,000			\$ 333,055			\$ 673,055	
Parking Lot Signage & Striping	\$ 20,000			\$ 18,890			\$ 38,890	
Lighting Improvements	\$ 87,500			\$ 86,895			\$ 174,395	
Subtotal	\$ 717,500	50%	13%	\$ 708,440	50%	5%	\$ 1,425,940	8%
Landscaping & Irrigation								
Landscaping and Hardscape	\$ 206,250			\$ 22,920			\$ 229,170	
Subtotal	\$ 206,250	90%	4%	\$ 22,920	10%	0%	\$ 229,170	1%
Building and Building Exterior Improvements [1]								
Building Façade Improvements	\$ 1,301,705			\$ 1,301,710			\$ 2,603,415	
SEC Restaurant White Box	\$ 240,000			\$ 233,650			\$ 473,650	
New Pad Building White Box (Container Store)	\$ 1,741,105			\$ 1,741,110			\$ 3,482,215	
Building Signage	\$ 212,890			\$ 212,890			\$ 425,780	
Subtotal	\$ 3,495,700	50%	65%	\$ 3,489,360	50%	27%	\$ 6,985,060	38%
Exterior Furniture and Amenities								
Exterior Furniture - Benches/Trash Receptacles	\$ 15,900			\$ 15,900			\$ 31,800	
Exterior Furniture - Planters	\$ 18,345			\$ 18,345			\$ 36,690	
Public Gathering Space (Pocket Park)	\$ 71,875			\$ 71,880			\$ 143,755	
Subtotal	\$ 106,120	50%	2%	\$ 106,125	50%	1%	\$ 212,245	1%
Signage								
Shopping Center Monument Sign	\$ 98,000			\$ 10,295			\$ 108,295	
Subtotal	\$ 98,000	90%	2%	\$ 10,295	10%	0%	\$ 108,295	1%
Infrastructure & Equipment								
Sanitary Sewer, Water, Stormwater and Electrical upgrades	\$ 202,470			\$ 176,605			\$ 379,075	
Building HVAC	\$ -			\$ 211,000			\$ 211,000	
Roof replacement	\$ -			\$ 332,000			\$ 332,000	
Subtotal	\$ 202,470	22%	4%	\$ 719,605	78%	6%	\$ 922,075	5%
Tenant Improvement Costs [2]								
Building Interior Improvements	\$ 550,000			\$ 4,633,640			\$ 5,183,640	
Subtotal	\$ 550,000	10.61%	10%	\$ 4,633,640	89%	36%	\$ 5,183,640	28%
Engineering Fees								
Preparation of development plans and constructions plans for all items in budget	\$ -			\$ 465,000			\$ 465,000	
Subtotal	\$ -	0%	0%	\$ 465,000	100%	4%	\$ 465,000	3%
SUBTOTAL PROJECT COSTS	\$ 5,376,040	35%	100%	\$ 10,155,385	65%	79%	\$ 15,531,425	85%

	CID	% of %of CAT	% of CID	Private Investment	% of CAT	% of PRIV	Total Cost of Improvements	% of TOT
SOFT PROJECT COSTS								
Commissions & Marketing Costs								
Commissions	\$ -			\$ 445,000			\$ 445,000	
Marketing Costs	\$ -			\$ 750,000			\$ 750,000	
Subtotal	\$ -	0%	0%	\$ 1,195,000	100%	9%	\$ 1,195,000	7%
Development Fee								
Developer Fee	\$ -			\$ 285,000			\$ 285,000	
Subtotal	\$ -	0%	0%	\$ 285,000	100%	2%	\$ 285,000	2%
Legal Fees								
All legal work associated with CID, development plan approvals, etc.	\$ -			\$ 100,000			\$ 100,000	
Subtotal	\$ -	0%	0%	\$ 100,000	100%	1%	\$ 100,000	1%
Financing Costs								
Construction period interest	\$ -			\$ 360,000			\$ 360,000	
Subtotal	\$ -	0%	0%	\$ 360,000	100%	3%	\$ 360,000	2%
Contingency								
Hard Cost Contingency (10%)	\$ -			\$ 802,425			\$ 802,425	
Subtotal	\$ -	0%	0%	\$ 802,425	100%	6%	\$ 802,425	4%
SUBTOTAL "SOFT" PROJECT COSTS	\$ -	0%	0%	\$ 2,742,425		21%	\$ 2,742,425	15%
TOTAL PROJECT COSTS	\$ 5,376,040	29%	100%	\$ 12,897,810	71%	100%	\$ 18,273,850	100%

CID reimbursements up to the CID Cap, as outlined in Section 3.04 herein may be transferred among categories with the following exceptions:

[1] CID reimbursement for Building and Building Exterior Improvements cannot exceed the amount budgeted for this category; CID funds unspent from this category cannot be transferred to another CID expenditure category.

[2] CID reimbursement for Tenant Improvements ("TI") are limited to expenditures for the Restaurant White Box space and to the Container Store. CID funds unspent from TI cannot be transferred to another CID expenditure category.

EXHIBIT C-2

EXHIBIT C-3

EXHIBIT G
PERFORMANCE MILESTONES

Commence remodeling of existing buildings	No later than April 15, 2014
Commence construction of the Container Store	No later than July 15, 2014
Complete construction of CID Improvements	No later than December 31, 2015

EXHIBIT H
FORM OF CERTIFICATE OF EXPENDITURE

CERTIFICATION OF EXPENDITURES
HAWTHORNE PLAZA CID IMPROVEMENTS

Date: _____

Certification # _____

Governing Body of the
City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 2013 (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and Hawthorne Plaza, LLC (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 CID Improvements, as follows:

1. To the best of my knowledge, all amounts are expenses for CID Improvements that are reimbursable to the Developer pursuant to the Agreement.
2. All amounts have been advanced by the Developer for CID 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 Attachment A attached hereto and which Attachment A includes _____ page(s), is incorporated herein by reference and has been signed by the authorized representative of the Developer who signed this Certificate.

Approved: _____

By: _____

Its _____

City's Representative

**ATTACHMENT A
TO CERTIFICATION OF EXPENDITURES
HAWTHORNE PLAZA CID IMPROVEMENTS**

PAGE _____ OF _____

Date: _____

Certification # _____

**DESCRIPTION OF EXPENSE
(ATTACH ADDITIONAL SUPPORTING
DOCUMENTATION)**

Amount of Expense

1. _____ \$ _____

2. _____ \$ _____

3. _____ \$ _____

4. _____ \$ _____

TOTAL EXPENSES \$ _____

Signature of Developer

EXHIBIT I
COVENANT TO MAINTAIN PARKING FACILITIES

THIS COVENANT made and entered into this ____ day of _____, 2013, by and between the City of Overland Park, Kansas, (the “City”), and Hawthorne Plaza, LLC, its successors and assigns (“Owner”).

WHEREAS, Owner has an interest in certain real property generally located at the southwest corner of 119th Street and Roe Avenue in Overland Park, Johnson County, Kansas, and legally described in Exhibit "A" attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, Owner intends to cause or has caused the Property to be renovated in accordance with the Municipal Code of the City of Overland Park, Kansas; and

WHEREAS, Owner proposes the construction or replacement of private streets, drives, parking and driveway facilities located on the Property (the “Facilities”); and

WHEREAS, the City has deemed that it is in the public interest to properly maintain, repair and replace the Facilities for the benefit of the Property, the general public and surrounding areas; and

WHEREAS, this Covenant for the proper maintenance, repair and replacement of the Facilities is necessary to serve the development of the Property and to provide for appropriate traffic safety, convenience and circulation.

NOW, THEREFORE, the City and Owner do hereby covenant and agree as follows:

Section 1. Owner at its sole cost shall:

- a. Be responsible for the continuous and perpetual maintenance, repair and replacement, if necessary, of the Facilities; and
- b. Obtain all necessary permits required for the construction, maintenance, repair or replacement of the Facilities prior to performing any such work on the Facilities.

Section 2. The City is granted the right, but is not obligated, to enter upon the Property in order to inspect, maintain, repair or replace the Facilities if Owner fails to maintain, repair or replace the Facilities in accordance with the applicable City ordinances and regulations. In the event then the City provides or performs any maintenance, repair, or replacement of the Facilities, the City may charge the costs for the same against Owner, who shall reimburse the City upon demand within thirty (30) days from the date of the billing. If payment is not made within thirty (30) days, the City may take any or all of the following actions:

- a. Assess a lien against the Property;
- b. Maintain suit against Owner for all costs incurred by the City; or

- c. Take any other action permitted by law.

Unless necessitated by a threat to life or safety, the City shall notify Owner not less than thirty (30) days before it begins any maintenance, repair, or replacement of the Facilities. Such notice shall contain a detailed description of the required maintenance, repair or replacement of the Facilities. Owner shall be afforded the opportunity to complete such maintenance, repair or replacement during such 30-day period. If Owner timely commences and diligently pursues to completion such maintenance, repair or replacement but the same cannot be reasonably completed during such 30-day period, Owner shall be afforded an additional reasonable amount of time to complete the same. Owner shall also have all rights to appeal the necessity of any such requirement for maintenance, repair or replacement as set forth under the applicable city codes or regulations.

Section 3. Owner shall not use nor attempt to use the Property in any manner which would interfere with the continuous and perpetual use, maintenance, repair or replacement of the Facilities and, in particular, shall not build thereon or thereover any structure which may interfere or cause to interfere with the use, maintenance, repair or replacement of the Facilities without the explicit written permission of the City as may be required under any applicable city code or regulation.

Section 4. Owner shall be and shall remain liable for and subject to all permits issued to any contractor(s) engaged by Owner or Owner's agent for the Facilities or related improvements under the terms of this Covenant until the permits issued have satisfied their performance and warranty surety requirements.

Section 5. All notices required by this Covenant shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Covenant has given ten (10) days notice of a change of person and address for purposes of notice under this Covenant to the other party in writing, notices shall have a prominent marking on the envelope stating "IMPORTANT LEGAL NOTICE" and be directed to the following:

Notice to the City:
Director Planning and Development Services
City Hall
8500 Santa Fe Drive
Overland Park, KS 66212

Notice to Owner:
[Provide contact name and address]

Section 6. This Covenant shall be binding upon the parties and their respective successors and assigns. It is the intention of the parties that this Covenant shall be a covenant running with the land and shall bind all successive owners of any interest in the Property.

Section 7. This Covenant shall not be amended, modified, canceled or abrogated without the prior written consent of the City. Any such amendment, modification, cancellation or abrogation shall be filed of record with the Johnson County, Kansas Department of Records and Tax Administration.

Section 8. Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 9. This Covenant shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 10. Upon the effective date of this Covenant, the City shall file this Covenant with the Johnson County, Kansas Department of Records and Tax Administration, and this Covenant shall be binding on Owner and Owner's successors and assigns.

Section 11. Owner shall jointly and severally release, hold harmless, indemnify and defend the City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Owner or to any person or property caused by or incidental as to the design, function, use, construction, maintenance, repair or replacement of the Facilities by Owner, or the Owner's failure to properly maintain, repair or replace the Facilities.

CITY OF OVERLAND PARK, KANSAS

[INSERT NAME OF OWNER]

By: _____
Jack D. Messer, P.E.
Director, Planning and Development Services

By: _____
Name: _____
Title: _____

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

MUNICIPAL CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jack D. Messer, P.E., Director of Planning and Development Services of the City of Overland Park, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the foregoing instrument on behalf of said City, and affix thereto the seal of the City.

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

Notary Public

My appointment expires:

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of said company, and acknowledged the execution of the same to be the act and deed of said company.

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

Notary Public

My appointment expires:

EXHIBIT K
INSURANCE SPECIFICATIONS

1. Worker's Compensation (as applicable). Developer may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. Developer will purchase and maintain with primary limits of not less than \$2,000,000.
3. Automobile Liability (as applicable). Developer will purchase and maintain with primary limits of not less than \$1,000,000.
4. Excess Liability. Developer will purchase and maintain excess liability insurance in an amount not less than \$3,000,000.
5. Special Perils Form Property Insurance. Developer will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils, but only to the extent required by Developer's lender for the Project.