

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (the "**Agreement**") is made as of _____, 2014 (the "**Effective Date**") between THE CITY OF OVERLAND PARK, KANSAS (the "**City**"), and AVENUE 80, LLC, a Kansas limited liability company ("**Developer**").

RECITALS:

A. The Developer is the party to two separate Purchase Agreements with rights to purchase certain real property which is located in the City and is generally located on the southeast corner of the southeast corner of Metcalf Avenue and West 80th Street, west of Broadmoor, which property is legally described on **Exhibit A-1** and generally depicted on **Exhibit A-2**, as attached hereto (the "**Project Site**").

B. There are currently two (2) buildings located on the Project Site – the 23,318 square foot former O'Neill automotive building, and the 2,218 square foot former Sonic restaurant building (collectively, the "**Existing Buildings**"). The Developer wishes to demolish the Existing Buildings and to redevelop and improve the Project Site and therefore proposes to design, redevelop and construct a new mixed-use facility, including approximately 218 units of multi-family housing, with approximately 16,000 square feet of retail/office space and other improvements to the Project Site, all as more particularly set forth in Section 2.1 below (the "**Project**").

C. The City has the authority to create a tax increment financing ("**TIF**") district pursuant to K.S.A. 12-1770 *et seq.*, as amended from time to time (the "**Act**") for the purpose of financing certain economic development projects. On or about July 2, 2014, the Developer submitted a TIF application (the "**TIF Application**") to the City requesting the formation of a TIF district located on the Project Site.

D. On July 7, 2014, the City approved the creation of a TIF district on the Project Site (the "**District**") through the adoption of Ordinance No. RD-3049 (the "**TIF District Ordinance**") pursuant to the Act. The TIF District Ordinance is attached hereto as **Exhibit B-1**. The boundaries of the District are the same as the boundaries of the Project Site and the District is hereby legally described on **Exhibit C-1** and generally depicted on **Exhibit C-2**, as attached hereto.

E. On _____, 2014, the City approved and adopted a Redevelopment Project Plan for the District through the adoption of **Ordinance No. _____** (the "**TIF Project Ordinance**") pursuant to the Act. The TIF Project Ordinance is attached hereto as **Exhibit B-2**, and together the TIF District Ordinance and the TIF Project Ordinance may be collectively referred to herein as the "**Ordinance**."

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 TIF financing for the Project.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

ARTICLE I.
DEFINITIONS AND RULES OF CONSTRUCTION

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

1.2 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.

1.3 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 this Article 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.

1.4 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

2.1 Redevelopment of the Project Site. The City and Developer hereby agree that the Project shall be as described herein and on Exhibit D. Developer hereby contemplates that all buildings, parking facilities and other improvements constituting the Project, as specifically described in this Section 2.1 (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 Section 2.1 and the final site plan approval from the City's Planning Commission and the City's Governing Body. 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 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 Section 2.1 and all other Applicable Laws and Requirements. The parties further agree that, subject to any changes in the planning process, the "Project" shall include the following:

(a) Improvements. The demolition of the Existing Buildings and the design, development, construction and completion of a four (4) story, wood framed building with approximately two-hundred eighteen (218) residential units for rent at market rates, along with approximately 16,000 square feet of first-floor retail and/or office space with frontage onto Metcalf Avenue as generally shown on Exhibit D.

(b) Parking Facilities and Improvements. The design, development and construction and completion of a structured parking facility which is wrapped by residential units, all as generally shown on Exhibit D, construction of "on-street" angled surface parking spaces along 80th Street and Broadmoor Street in order to develop a typical urban-type walkable setting, construction of off-street surface parking to provide for ground floor commercial spaces, along with parking lot signage and striping, lighting improvements for the parking structures and lots, and electrical service thereto.

(c) New Pedestrian Improvements. The construction and completion of sidewalk improvements and repairs, including sidewalk ramps and connections, as required by the City's Planning Commission to provide for a walkable pedestrian environment as identified through the Vision Metcalf Plan and Downtown Form Based Code. The construction and completion of necessary cross-walk improvements to allow for the modernization and anticipated increased usage of the crossing of the south leg of Metcalf Avenue, including improvements necessary to modify the west side of Metcalf Avenue.

(d) Landscaping and Irrigation. The design, redevelopment and construction and completion of the enhancement of existing landscaping and irrigation systems benefiting the Project Site along with the design and construction and completion of new landscaping and irrigation systems.

(e) Infrastructure Improvements. The design, redevelopment and construction and completion of infrastructure improvements, including stormwater, sewer, water main improvements, and burying of above-ground utility lines along with other similar improvements.

(f) Street Improvements. The construction and completion of a reconstruction of 80th Street and Broadmoor Street to allow for the construction of on-street parking facilities sufficient to provide for a smooth transition from the existing roadway section to the new parking facilities. Necessary curb, gutter and ramp improvements to allow for sufficient transitions to match existing.

(g) Traffic Improvements. To the extent required through the normal planning process, replacement of the 80th Street and Metcalf Avenue traffic signal to include modern signal equipment with a pedestrian phase. The parties agree that the City may also require improvements beyond what are required through the normal planning process, which improvements will be paid for by the City.

2.2 Construction of Broadmoor Street Improvements. **TO BE COMPLETED**

2.3 TIF 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 "TIF Improvements." The TIF Improvements, and the estimated costs thereof, are set forth in **Exhibit E**. A portion of the costs of the TIF Improvements may be reimbursed to Developer as set forth in Article IV below. Other than the TIF Improvements, the balance of the costs of completing the Project shall be funded by Developer as well as by various third parties from private sources.

2.4 Completion of the Project. Developer shall complete the Project, including the TIF Improvements, in conformance with this Agreement, the Redevelopment 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.

2.5 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, except as otherwise specifically provided herein.

2.6 Project Timing – Milestones. Developer, subject to the terms of Section 8.7 hereof, agrees to construct the Project based upon the schedule set out and contained within **Exhibit F**, the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit F**, 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 7.4 herein.

2.7 Indemnification. Developer agrees to indemnify and hold the City, its employees, agents and any independent contractors and consultants engaged by the City for work on this Project (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 TIF 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 Project or 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 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 or its officers, employees or agents. 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.

(b) 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, but the failure to notify Developer will not relieve Developer of any liability that it may have to a City Indemnified Party. 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 timely to 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.

(c) 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.

(d) 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).

(e) 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.

2.8 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, general liability and employee dishonesty) and in such amounts as are adequate to protect the Developer and the Project. 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, throughout the Term of this Agreement, 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 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:

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.

Limits (Same as General Liability)

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

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

Limits –

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

(vi) Workers' Compensation: This insurance shall protect the contractor against all claims under applicable state workers' compensation laws. The Developer shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
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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) 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 attorneys' fees, arising out of the acts or omissions of its subcontractors.

2.9 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 2.9(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. **FINANCING — SOURCE OF FUNDS**

3.1 Source of Funds. The Project will generally be funded by Developer's private equity and debt and funds provided by various third parties. Subject to the terms and conditions of this Agreement, the TIF Improvements shall be funded in part by the TIF Proceeds (as defined below). Reference is hereby made to the TIF Improvement Costs which are more particularly set forth on **Exhibit E** attached hereto. Developer, using private equity and debt, will initially advance all of the costs for the design, development and construction of Improvements, including the TIF Improvements. Developer, subject to

the terms and conditions of this Agreement, including the TIF Cap set forth in Section 3.4 below, shall be reimbursed for the TIF Improvement Costs from and to the extent of the TIF Proceeds.

3.2 Collection of TIF Revenues. During the TIF Collection Period (as defined in Section 3.4(a) below), the City shall collect Incremental Real Property Taxes as defined below), unless the TIF shall be earlier terminated pursuant to Section 3.4(b) below or the other express terms of this Agreement. Pursuant to the provisions of the Redevelopment Project Plan and the Act, including, but not limited to, Section 12-1774(a) thereof, when the TIF is established by Ordinance for a district, the real property located therein is subject to assessment for annual Real Property Taxes. Real Property Taxes shall be due in arrears, with half due on December 20th and half due on May 10th of each year in which said amount is required to be paid, and will be considered delinquent if not paid by such dates of each such year or as otherwise determined by applicable law. The obligation to make said Real Property Taxes shall be a covenant running with the land and shall create a lien in favor of the City on each such tax parcel as constituted from time to time and shall be enforceable against Developer and its successors and assigns in ownership of property in the District. The parties hereby understand and agree that 100% of the Incremental Real Property Taxes from the District shall be available to Developer for Reimbursable Project Costs, subject to the TIF Cap. For purposes hereof, the term "Incremental Real Property Taxes" means the incremental increase in ad valorem real property taxes generated within the District above the ad valorem real property taxes generated by levy on the January 1, 2014 taxable valuation of the Redevelopment Project Area and available under the Act, received by the City from Johnson County, Kansas.

3.3 Special Allocation Fund. The City shall establish and maintain a Special Allocation Fund and 100% of Incremental Real Property Taxes shall be deposited into the the Special Allocation Fund. Real Property Taxes deposited and any interest earned on such deposits will be used for the payment or reimbursement of TIF Improvement Costs, in the manner set forth in this Agreement, subject always to the TIF Cap.

3.4 Pay-As-You-Go TIF Financing; TIF Cap. The parties hereby agree that the proceeds from the Incremental Real Property Taxes may be referred to herein as the "TIF Proceeds." The parties hereby agree that the TIF Proceeds shall be disbursed by the City from the Special Allocation Fund on a pay-as-you-go basis, on a semi-annual basis and not later than thirty (30) days after receipt by the City of such TIF Proceeds ("Pay-As-You-Go TIF Financing"), to reimburse Developer for Eligible Expenses, if and to the extent that (i) there are TIF Proceeds in the Special Allocation Fund, (ii) Developer has fully satisfied all of the conditions as set forth in Section 3.5 below, (iii) the term of the TIF Collection Period (as defined in Section 3.4(a) below) has not yet expired, and (iv) Developer has not already been reimbursed for Eligible Expenses in an amount equal to the TIF Cap (as defined below). The parties further agree as follows:

(a) The TIF Proceeds shall be collected within the District and directed to the Special Allocation Fund for a period that commences on the date of approval of the Redevelopment Project Plan, 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 TIF Financing, or (ii) the date that the City collects and disburses as required by this Agreement the final tax payment that relates to the period of time that is twenty (20) years from the date that the Redevelopment Project Plan was approved for the District (the "TIF Collection Period"). At the end of the TIF Collection Period, the parties understand and agree that the TIF shall thereafter terminate.

(b) The TIF Proceeds available to Developer for reimbursement of Eligible Expenses shall be limited as follows: (i) the amount of Eligible Expenses reimbursed to Developer from TIF Proceeds through Pay-As-You-Go TIF Financing, and/or (ii) the maximum amount of Eligible Expenses reimbursed to Developer from the TIF Proceeds through Pay-As-You-Go TIF Financing, shall in no event exceed seven million, six-hundred and thirteen thousand, seven-hundred and seventeen Dollars (\$7,613,717) (the "TIF Cap"). The TIF Cap shall, for all purposes set forth herein, operate as a cap on the use of TIF Proceeds for reimbursement of any and all Eligible Expenses prior to reimbursement -- which amounts, if any, shall effectively reduce the TIF Cap. Once Developer has received an amount equal to the TIF Cap reimbursement of Eligible Expenses through Pay-As-You-Go TIF Financing, the parties understand and agree that the TIF shall thereafter terminate. The parties hereby understand and agree that the TIF Cap has been initially established at \$7,613,717. However, upon Substantial Completion of the Project, and prior to receipt of any Pay-As-You-Go TIF Financing as set forth in Section 3.4 above, the Developer shall update each of the numbers highlighted in the Equity IRR Formula attached hereto as Exhibit G, and provide the City with such updated Equity IRR Formula, along with evidence of such updated costs, revenues and other figures to the reasonable satisfaction of the City.

(i) If the updated Equity IRR Formula produces a projected equity internal rate of return to the Developer that exceeds sixteen percent (16%), the TIF Cap shall at that time be reduced so that the Equity IRR Formula produces a projected equity internal rate of return to the Developer that is equal to sixteen percent (16%).

(ii) If the updated Equity IRR Formula produces a projected equity internal rate of return to the Developer that does not exceed sixteen percent (16%), the TIF Cap shall not be reduced.

(iii) Thereafter, the TIF Cap shall not be subject to further review or adjustment.

(c) Developer shall not receive any reimbursements from Pay-As-You-Go TIF Financing unless and until the conditions precedent set forth in Section 3.5 have been fully satisfied as determined by City in its sole reasonable discretion.

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

(a) Conditions to Reimbursement of TIF Improvement Costs. Developer shall not receive any reimbursements for TIF Improvement Costs to the extent certified, unless and until:

(i) City has approved Certificates of Expenditure for such TIF Improvements;

(ii) Construction of the Improvements described in Section 2.1 shall be completed; and

(iii) 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.

3.6 No TIF Bonds. Developer hereby understands and agrees that all reimbursements to the Developer hereunder shall be made only from Pay-As-You-Go TIF 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.

3.7 City Expenses. As and when there are sufficient TIF Proceeds from the District to pay the TIF Administrative Fee, Developer hereby understands and agrees that such TIF Administrative Fee shall first be paid to the City prior to the payment of Eligible Expenses from the Special Allocation Fund from Pay-As-You-Go TIF Financing.

3.8 Payment of Redevelopment Project Costs.

(a) Developer's Private Contribution of approximately \$41,000,000 or such other amount necessary to construct the project ("Developer's Private Contribution") shall be the responsibility of the Developer and not the City. Developer shall be solely responsible for securing Developer's Private Contribution.

(b) In the event that the TIF Proceeds contemplated by the Total Project Budget for payment of Developer's Eligible Costs are in any way insufficient in any respect to pay all such Eligible Costs, and to complete any of the Improvements included therein, lien free (a "TIF Proceeds Shortfall"), then Developer agrees that it will, from time to time as necessary, pay any and all of said TIF Proceeds Shortfall and will complete such Improvements, lien free.

(c) In the event that the TIF Proceeds exceed the TIF Cap and such amounts up to the TIF Cap have been distributed to the Developer and the Improvements included therein have been certified as fully completed and paid for, lien free, then the TIF shall terminate and any such excess shall be returned to the City.

ARTICLE IV.

TIF REIMBURSEMENT

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

4.2 Certificate of Expenditures. In connection with the Eligible Expenses for the TIF 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 TIF Improvement. 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 TIF Improvements and 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.

(c) 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 TIF 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 (c).

(d) 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 City shall approve the Certificate of Expenditure, then the City shall reimburse the Developer for financing the cost of the TIF 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.

(e) During the Term, the Developer shall endeavor to submit Certifications of Expenditures for those expenditures made in connection with the TIF Improvements on not less frequently than a quarterly basis, and shall submit a Certificate of Expenditures for any expenditure made in connection with a TIF Improvement within one-hundred eighty (180) days of incurring such expenditure.

4.3 Economic Development Revenue Bonds. Subject to all Applicable Laws and Requirements, and subject further to compliance by Developer with all City requirements for the issuance of economic development revenue bonds ("EDRBs"), the parties hereby agree that Developer may use EDRB financing to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for the Project. However, the parties hereby understand and agree that, for purposes of the EDRB financing agreed to and provided for in this Section 4.3, the EDRBs shall not be used for abatement of ad valorem taxes for the Project or the Project Site, except for and excluding public improvements thereon. Further, Developer hereby understands and agrees that: the EDRBs for each respective phase of the Project shall be redeemed and paid in full within twelve (12) months from the date of completion of the Improvements for such respective phase.

ARTICLE V.

**ASSIGNMENT AND TRANSFER OF
DEVELOPER'S RIGHTS AND INTERESTS**

5.1 Assignments by Developer. The Project Site and the rights, duties and obligations hereunder of the Developer may not be conveyed or assigned, in whole or in part, to another entity, without the prior approval of the City's governing body, which approval may not be unreasonably withheld, 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 of Johnson County, Kansas, in a timely manner following the execution of such agreements.

5.2 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 TIF Proceeds, except as specifically authorized in writing by the Developer and the City.

5.3 Excluded Encumbrances and Transfers. The foregoing restrictions on assignment, transfer and conveyance and the restriction in this Article V shall not apply to (i) any security interest granted to secure indebtedness to any construction or permanent lender, or (ii) the sale, rental and leasing of portions of the Project Site for the uses permitted under the terms of this Agreement.

ARTICLE VI.

USE AND OPERATION

6.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon that date which is the earlier of (i) the last day of the TIF Collection Period, or (ii) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TIF Financing (the "Term").

6.2 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 6.3 hereof.

(c) Perform its duties to repair, restore and replace portions of the Project as set forth in Sections 6.7(b) and (d).

(d) Developer hereby understands and agrees that the nature of the project 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 Project.

(ii) Any pawn shop, flea market or "second hand" store.

(iii) Pay-day or title loan facilities.

(iv) Any store selling discounted tobacco products or tobacco-smoking paraphernalia, including without limitation, smokeless cigarettes, electronic and vapor smoking devices.

(v) 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 in the District.

(vi) 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 of the District to determine its own selling prices nor shall it preclude the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(vii) 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 all Environmental Laws (as hereinafter defined).

(viii) Any establishment selling or exhibiting pornographic 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 in 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.

(ix) Any restaurant or tavern that derives more than seventy percent (70%) of its gross sales from the sale alcohol, which includes any nightclub;

(x) Any precious metals facilities, but not including any reputable jewelry store.

(xi) Housing in which rent is government-subsidized or "low income" housing.

(xii) Any use not permitted by the applicable Zoning Ordinance of the City. The foregoing list of prohibited uses is not intended to supplant the requirements and/or prohibition of uses stated within the City's Code and/or the City's Zoning Ordinance

At the Closing, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 6.2(d) 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.

6.3 Maintenance and Use. During the Term, Developer shall cause the TIF 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 multi-family and retail and office 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. 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. Developer agrees to set aside on its books such commercially reasonable reserves for future maintenance and capital expenditures. 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 (a) Covenant to Maintain Private Parking Facilities, the form of which is attached hereto as **Exhibit I**.

6.4 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.

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

(a) So long as the Developer owns real property within the District, Developer 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 TIF Financing during any time that such real estate taxes and assessments on the property the Developer owns within the District remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that (i) Developer shall pay any and all

amounts that are contested under protest while any such proceedings are pending, and (ii) the City shall suspend all reimbursements of Eligible Expenses through Pay-As-You-Go TIF Financing during any time that such proceedings are pending final resolution. The Developer and any other owners of real property within the District shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such other owners' 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. The Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Project as a result of acts of the Developer, its agents or independent contractors.

6.6 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.

6.7 Damage, Destruction or Condemnation.

(a) In the event of damage to or destruction of any portion of the Project resulting from fire or other casualty during the Term, or in the event any portion of the District is condemned or taken for any public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, the net proceeds of such condemnation or taking or the net proceeds of any realization on title insurance shall be disbursed and utilized as required by any deed of trust or mortgage (the "Mortgage") which is filed for record on the Project. If at the time of the payment of the net proceeds there is not a Mortgage filed for record against the Project, the net proceeds shall be paid into, and used in accordance with a construction escrow agreement reasonably satisfactory to the City and Developer ("Casualty Escrow").

(b) 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, at its sole cost and expense, shall (i) if there is a Mortgage at the time of such damage or destruction, commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the casualty so long as such action is not inconsistent with Developer's requirements under the Mortgage, and (ii) if there is not a Mortgage at the time of such damage or destruction, commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the casualty and shall be entitled to draw upon the Casualty Escrow for payment of said costs. If the Developer does not repair, restore or replace the Damaged Facilities, the Developer agrees to remove all damage and debris from the Project Site so that the same is in a safe, clean and slightly condition. If such damage or destruction has

rendered the Project uninhabitable and the Developer does not repair, restore or replace the Damaged Facilities, the Developer agrees to remove all of the Project from the Project Site to the extent requested by the City. In the event that Developer does not repair, restore or replace the Damaged Facilities as set forth herein, Developer hereby understands and agrees that the City shall have the right, in the City's discretion, to (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of TIF Proceeds, and/or (ii) terminate the TIF, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement.

(c) If at any time during the Term, title to the whole or substantially all of the Project which has previously been conveyed to Developer shall be taken in condemnation proceedings or by right of eminent domain, Developer, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 6.7(c), "substantially all of the District" shall be deemed to have been taken if the City and Developer, each acting reasonably and in good faith, determine that the untaken portion of the District, including the parking improvements, cannot be practically and economically used by Developer for the purposes and at the times contemplated by this Agreement.

(d) In the event of condemnation of less than the whole or substantially all of the District which has previously been conveyed to Developer during the Term, Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Project, as nearly as possible, to its former condition, and shall be entitled to draw upon the Casualty Escrow for payment of said costs. Notwithstanding the foregoing, if a Casualty Escrow has not been established because there is a Mortgage on the Project, the Developer shall not be obligated to repair, restore or replace the remaining part of the Project if the holder of the Mortgage has withheld the condemnation proceeds. In the event that Developer does not repair, restore or replace the remaining part of the Project as set forth herein, Developer hereby understands and agrees that the City shall have the right, in the City's discretion, to (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of TIF Proceeds, and/or (ii) terminate the TIF, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement.

(e) Nothing in this section will require the Developer to expend funds in excess of the Casualty Escrow for the repair, restoration and/or replacement of the Damaged Facilities.

6.8 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 6.8 shall restrict or impede the right of the City to enter the District pursuant to any Applicable Laws and Requirements.

6.9 Periodic Meetings with the City. From the Effective Date until Substantial Completion of the Project, Developer hereby agrees to 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.

6.10 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.

SPECIAL PROVISIONS

7.1 Expenses and TIF Administrative Fee. The Developer shall be responsible for and pay, within thirty (30) days of the invoice, the reasonable legal fees of the City's attorneys' fees incurred in connection with the creation, amendment and implementation of the TIF and this Agreement (including the negotiation of this Agreement) and related agreements 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 4.1. Additionally, the TIF Proceeds shall be used to pay the TIF Administrative Fee. The TIF Administrative Fee shall be due on the date that any TIF Proceeds are received (provided that the Act permits payment directly from the TIF Proceeds, and if not, within thirty (30) days of demand therefor by the City).

7.2 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 Downtown Overland Park Business Improvement District, and (b) Developer shall annually sponsor a Downtown Overland Park program or event in an amount to be determined in the sole discretion of Developer, but not to be less than \$1,000 annually.

7.3 TIF Limitations. Notwithstanding anything in this Agreement to the contrary, the parties intend for this Agreement to fully comply with all Applicable Laws and Requirements related to the use of TIF.

ARTICLE VIII.

DEFAULT AND REMEDIES

8.1 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.

8.2 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.

8.3 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 twenty (20) days after the City has given Developer as applicable, 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.

8.4 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 TIF Proceeds unless and until such default is cured by the Developer, and/or (ii) terminate the TIF, 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 hereunder and those provided by law 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.

8.5 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 or Agent shall be made by personal service upon an officer or agent of the Developer or Agent and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

8.6 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.

8.7 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. The City will not unreasonably withhold, condition or delay approval of any such extensions if such Excusable Delays are properly evidenced and documented, and the City agrees to notify the Developer within forty five (45) days of receiving a notice of an Excusable Delay whether such request for an extension has been granted. 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 F hereto, such extension shall only be granted with the approval of City. 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 IX.

MISCELLANEOUS

9.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

9.2 Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(a) Organization. Developer is a Kansas limited liability company, duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(b) Authority. The execution, delivery and performance by Developer of this Agreement are within such party's powers and have been duly authorized by all necessary action of such party.

(c) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(d) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party

is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(e) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

9.3 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.

9.4 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.

9.5 Immunity of Officers, Employees and Members of the City. No personal recourse shall be had for the payment of the Pay-As-You-Go TIF 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, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, for any default or breach by the City.

9.6 Right to Inspect. The Developer agrees that the City, at the City's expense and 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.

9.7 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.

9.8 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.

9.9 Kansas Law; Conflicts with Ordinance. 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 Ordinance, the Ordinance is controlling.

9.10 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

9.11 Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

9.12 Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

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

To the Developer:

Terence P. O'Leary
Avenue 80, LLC
c/o EPC Real Estate Group
411 Nichols Road, Suite 225
Kansas City, Missouri 64112

With a copy to:

Scott W. Anderson
SA Legal Advisors LC
8801 Renner Avenue, Suite 403
Lenexa, Kansas 66219

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.

9.14 Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

9.15 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, 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.

9.16 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.

9.17 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.

9.18 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.

9.19 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 the light of the circumstances under which it was made, not misleading.

9.20 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. If any provision in this Agreement relating to the performance by the City of an act in the future is determined by a court of law to be the exercise of the City's legislative or governmental power, as opposed to an exercise of its proprietary or administrative power, such provision shall be deemed to be an expression of the intent of the City to perform such act.

9.21 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.

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

IN WITNESS WHEREOF, the City and 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 Leonard Street LLP

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this ____ day of _____, 2014, before me, personally appeared Carl Gerlach, personally known, who being by me duly sworn did say that he is the Mayor of the City of Overland Park, Kansas, a Kansas corporation, that said corporation has no corporate seal, that said instrument was signed on behalf of said corporation by authority of its Council, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, Kansas the day and year last above written.

Notary Public
Printed Name: _____

My commission expires:

AVENUE 80, LLC

By: _____
Name: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _ day of _____, 2014, before me personally appeared _____, to me personally known, who being by me duly sworn did say that he/she is the Manager of Avenue 80, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he/she executed the same as the free act and deed of said limited liability company.

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

Notary Public
Printed Name: _____

My Commission Expires:

INDEX OF EXHIBITS

The following terms have the following meanings:

"Act" means the Kansas Tax Increment Financing Act, K.S.A. 121770, et seq., as amended.

"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 2.7(b) hereof.

"Agreement" means this Crossroads 80 Redevelopment 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.).

"Broadmoor Improvements" means TO BE COMPLETED

"Casualty Escrow" means that certain escrow agreement for the net proceeds of any insurance relating to damage or destruction of the Project, the net proceeds of condemnation or taking or the net proceeds of any realization on title insurance for the Project as set forth in Section 6.7(a) hereof.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. as referred to in Section 2.7(a) hereof.

"Certificate" means the evidence of property insurance and certificate(s) of liability insurance to be provided by Developer pursuant to Section 2.8(a) of the Agreement.

"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 2.7 hereof.

"Commission" means the Kansas Human Rights Commission as referred to in Section 2.9(b) hereof.

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

"Developer" means Avenue 80, LLC, a Kansas limited liability company.

"Developer's Private Contribution" means those funds paid by Developer in the amount of \$41,000,000.

DRAFT FOR DISCUSSION PURPOSES

"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 tax increment financing district generally described in Recital D and established by the TIF District Ordinance, the boundaries of which are legally described on **Exhibit C-1** and generally depicted on **Exhibit C-1**, as attached hereto.

"Effective Date" means _____, 2014.

"Eligible Expenses" means expenses related to the TIF Improvements to the extent such expenses are "redevelopment project costs" as defined in the Act.

"Excusable Delays" means the delays for performance set forth in Section 8.7 hereof.

"Existing Buildings" means the two (2) buildings currently located on the Project Site – the 23,318 square foot former O'Neill automotive building, and the 2,218 square foot former Sonic restaurant building.

"Improvements" means the buildings, parking facilities and other improvements comprising the Project as set forth in Section 2.1, including landscaping, infrastructure and other improvements to the Project Site described in Section 2.1 and on **Exhibit D** attached hereto.

"Incremental Real Property Taxes" means the incremental increase in ad valorem real property taxes generated within the District above the ad valorem real property taxes generated by levy on the January 1, 2014 taxable valuation of the Redevelopment Project Area and available under the Act, as described in Section 3.2.

"Ordinance" means, collectively, the TIF District Ordinance and the TIF Project Ordinance, as described in Recital E hereof.

"Parties" means the City and Developer.

"Pay-As-You-Go TIF Financing" means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the TIF Improvements are financed without notes or bonds, and the costs are reimbursed as TIF Sales Tax is deposited in the TIF Sales Tax Fund as set forth in Section 3.4 hereof.

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

"Project" means the demolition of the Existing Buildings and redevelopment of the Project Site, including the design, redevelopment and construction of a new mixed-use facility, including approximately 218 units of multi-family housing, with approximately 8,400 of retail/office space and other improvements to the Project Site, all as more particularly described in Section 2.1 hereof and on **Exhibit D**.

DRAFT FOR DISCUSSION PURPOSES

"Project Site" means that certain real property which is located in the City and is generally located on the southeast corner of southeast corner of Metcalf Avenue and West 80th Street, west of Broadmoor, which property is legally described on Exhibit A-1 and generally depicted on Exhibit A-1, as attached hereto.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.7(a) 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 6.1 hereof.

"TIF" means tax increment financing in accordance with K.S.A. 12-1770 *et seq.*, as amended from time to time.

"TIF Administrative Fee" means an amount equal to the greater of \$5,000 per year or 1% of the TIF Proceeds deposited into the Special Allocation Fund hereunder from time to time during the Term.

"TIF Application" means the TIF application submitted by Developer to the City on or about May 15, 2014, as referred to in Recital C.

"TIF Cap" means the limitation on the amount of TIF Proceeds available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.4(b) hereof. The TIF Cap is \$7,613,717, subject to adjustments as set forth in 3.4(b).

"TIF District Ordinance" means Ordinance No. RD-3049, adopted by the City on July 7, 2014, as referenced in Recital D hereof and attached hereto as Exhibit B-1.

"TIF Collection Period" means the period that commences on the date of approval of the Redevelopment Project Plan 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 TIF Financing, or (ii) the date that the City collects and disburses as required by this Agreement the final tax payment that relates to the period of time that is twenty (20) years from the date that the Redevelopment Project Plan was approved for the District, as set forth in Section 3.4(a) hereof.

"TIF Improvements" means the projects and related permissible Improvements described in Section 2.3 and on Exhibit D attached hereto.

"TIF Proceeds" means the proceeds from the Incremental Real Property Taxes.

"TIF Proceeds Shortfall" means a shortfall in TIF Proceeds as set forth in Section 3.8(b) hereof.

"TIF Project Ordinance" means Ordinance No. _____, adopted by the City on _____, 2014, as referenced in Recital E hereof and attached hereto as Exhibit B-2.

INDEX OF EXHIBITS

- A-1. Project Site – Legal Description
- A-2. Project Site – Map
- B-1. TIF District Ordinance
- B-2. TIF Project Ordinance
- C-1. The District – Legal Description
- C-2. The District – Map
- D. The Project
- E. Project Budget/TIF Improvements Budget
- F. Performance Milestones
- G. Equity IRR Formula
- H. Form of Certificate of Expenditure
- I. Covenant to Maintain Private Parking Facilities
- J. Reserved

EXHIBIT A-1

PROJECT SITE – LEGAL DESCRIPTION

Legal Description

For the Proposed Tax Increment Financing District

For the ePartments Community project

At the southeast corner of 80th and Metcalf

(includes all of the ePartment Communities land plus the adjacent half of the rights of way for Metcalf, 80th Street and Broadmoor)

Beginning at a point on the west line of Section 29, Township 12 South, Range 25 East, 663.3 feet south of the northwest corner of said section in Overland Park, Johnson County, Kansas; thence south along the west line of said section a distance of 382.96 feet; thence easterly to a point on the west line of Lot 17, Kirkbride Place, a subdivision of land in the City of Overland Park, and 15 feet north of the southwest corner of said Lot 17; thence easterly along a line parallel to the south line of said Lot 17 a distance of 303.5 feet to a point on the east line of said Lot 17 and 15 feet north of the southeast corner of said lot; thence northerly a distance of approximately 11.16 feet along the east line of said Lot 17 and the west line of Lot 22, Kirkbride Place, to a point 24.5 feet north of the southwest corner of said Lot 22; thence easterly along a line parallel to the south line of said Lot 22 a distance of 180 feet to a point on the east line of said Lot 22 and 24.5 feet north of the southeast corner of said lot; thence easterly a distance of 20 feet along a line parallel to the south line of said Lot 22 to a point on the centerline of Broadmoor Street (originally platted as Merritt Avenue); thence northerly along the centerline of Broadmoor Street approximately 371.5 feet to a point on the centerline of 80th Street; thence westerly along the centerline of 80th Street a distance of approximately 528.5 feet to the Point of Beginning.

EXHIBIT A-2
PROJECT SITE- MAP

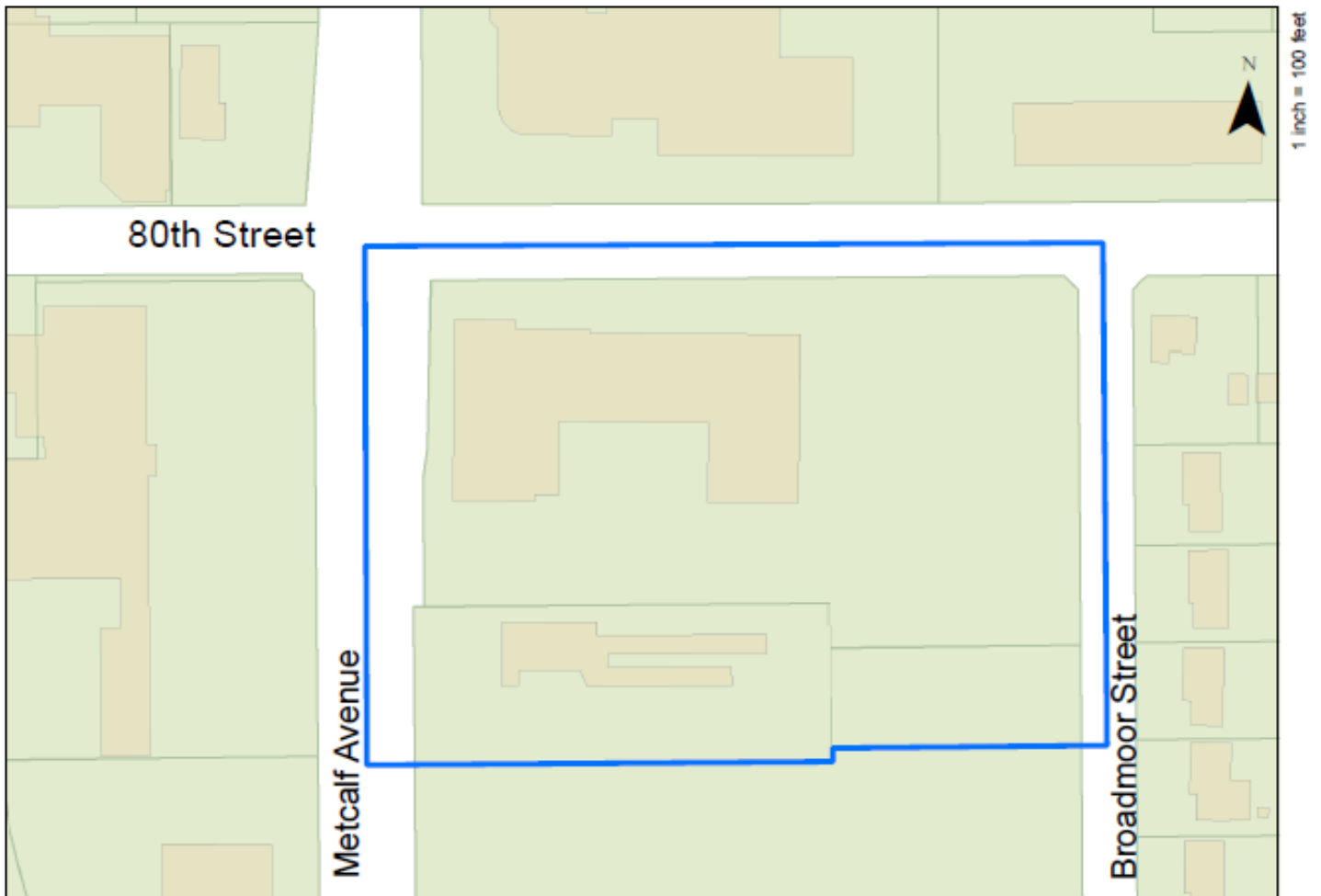


EXHIBIT B-1

TIF DISTRICT ORDINANCE

ORDINANCE NO. RD-3049

AN ORDINANCE MAKING FINDINGS AND ESTABLISHING A REDEVELOPMENT DISTRICT IN THE CITY OF OVERLAND PARK, KANSAS PURSUANT TO K.S.A. 12-1770 *ET SEQ.* AND AMENDMENTS THERETO (CROSSROADS 80 PROJECT).

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the "Act"), the City of Overland Park, Kansas (the "City"), is authorized to assist in the development and redevelopment of eligible areas within and without the City in order to promote, stimulate and develop the general economic welfare of the State of Kansas and its communities; and

WHEREAS, pursuant to the Act, the City adopted Resolution No. 4075 (the "Resolution") on June 2, 2014, finding and determining it desirable to encourage the development and redevelopment of certain real property within the City located at the southeast corner of 80th Street and Metcalf in the City and to consider the establishment of a redevelopment district at such location (the "Redevelopment District"); and

WHEREAS, the Resolution provided for a notice of a public hearing considering the establishment of the Redevelopment District to be given in accordance with the Act and that said public hearing would be held on July 7, 2014; and

WHEREAS, notice of the public hearing was duly given in accordance with the Act; and

WHEREAS, the public hearing was held and closed on July 7, 2014; and

WHEREAS, an area that is determined by the governing body of a city to be a "Conservation area" as described in K.S.A. 12-1770a(d) is eligible to be considered for the financing of redevelopment projects pursuant to the Act; and

WHEREAS, the Governing Body of the City has received and reviewed a Conservation Area Study related to the proposed Redevelopment District.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS AS FOLLOWS:

Section 1. The Governing Body of the City hereby finds and determines that the area of the Redevelopment District is a "Conservation area" as defined in K.S.A. 12-1770a(d). The legal description of the Redevelopment District is set forth on **Exhibit A** attached hereto and incorporated herein by reference.

Section 2. The Governing Body of the City hereby finds and determines that the Redevelopment District proposed to be developed is an "Eligible area" as defined by the Act.

Section 3. The Governing Body of the City hereby finds and determines that the conservation, development or redevelopment of the Redevelopment District is necessary to promote the general and economic welfare of the City.

Section 4. The district plan for the Redevelopment District is attached hereto as **Exhibit B** and incorporated herein by reference.

Section 5. The Redevelopment District is within the boundaries approved by the Resolution and published in the notice of the public hearing.

Section 6. Pursuant to the Act, the Redevelopment District is hereby established.

Section 7. This ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in an official City newspaper.

PASSED by the City Council this 7th day of July, 2014.

APPROVED by the Mayor this 7th day of July, 2014.

CITY OF OVERLAND PARK, KANSAS



ATTEST:

By: Carl Gerlach
Carl Gerlach
Mayor

By: Marian Cook
Marian Cook
City Clerk

APPROVED AS TO FORM:

By: Tammy M. Owens
Tammy M. Owens
Deputy City Attorney

APPROVED AS TO FORM:

By: Dorothea K. Riley
Dorothea K. Riley, Kutak Rock
Bond Counsel

EXHIBIT A

Legal Description

For the Proposed Tax Increment Financing District

For the ePartments Community project

At the southeast corner of 80th and Metcalf

**(includes all of the ePartment Communities land plus the adjacent half of the rights of way
for Metcalf, 80th Street and Broadmoor)**

Beginning at a point on the west line of Section 29, Township 12 South, Range 25 East, 663.3 feet south of the northwest corner of said section in Overland Park, Johnson County, Kansas; thence south along the west line of said section a distance of 382.96 feet; thence easterly to a point on the west line of Lot 17, Kirkbride Place, a subdivision of land in the City of Overland Park, and 15 feet north of the southwest corner of said Lot 17; thence easterly along a line parallel to the south line of said Lot 17 a distance of 303.5 feet to a point on the east line of said Lot 17 and 15 feet north of the southeast corner of said lot; thence northerly a distance of approximately 11.16 feet along the east line of said Lot 17 and the west line of Lot 22, Kirkbride Place, to a point 24.5 feet north of the southwest corner of said Lot 22; thence easterly along a line parallel to the south line of said Lot 22 a distance of 180 feet to a point on the east line of said Lot 22 and 24.5 feet north of the southeast corner of said lot; thence easterly a distance of 20 feet along a line parallel to the south line of said Lot 22 to a point on the centerline of Broadmoor Street (originally platted as Merritt Avenue); thence northerly along the centerline of Broadmoor Street approximately 371.5 feet to a point on the centerline of 80th Street; thence westerly along the centerline of 80th Street a distance of approximately 528.5 feet to the Point of Beginning.

EXHIBIT B

DISTRICT PLAN

The district plan for the Redevelopment District is the acquisition of property, demolition of existing improvements, site preparation, construction of a new mixed use building to include retail and apartment uses, parking facilities including a multilevel parking structure, and construction of related facilities and infrastructure within and adjacent to the redevelopment district necessary to implement a redevelopment project plan. The Redevelopment District will consist of a single redevelopment project area.

EXHIBIT B-2

TIF PROJECT ORDINANCE

To be Added

EXHIBIT C-1

THE DISTRICT – LEGAL DESCRIPTION

Legal Description

For the Proposed Tax Increment Financing District

For the ePartments Community project

At the southeast corner of 80th and Metcalf

(includes all of the ePartment Communities land plus the adjacent half of the rights of way for Metcalf, 80th Street and Broadmoor)

Beginning at a point on the west line of Section 29, Township 12 South, Range 25 East, 663.3 feet south of the northwest corner of said section in Overland Park, Johnson County, Kansas; thence south along the west line of said section a distance of 382.96 feet; thence easterly to a point on the west line of Lot 17, Kirkbride Place, a subdivision of land in the City of Overland Park, and 15 feet north of the southwest corner of said Lot 17; thence easterly along a line parallel to the south line of said Lot 17 a distance of 303.5 feet to a point on the east line of said Lot 17 and 15 feet north of the southeast corner of said lot; thence northerly a distance of approximately 11.16 feet along the east line of said Lot 17 and the west line of Lot 22, Kirkbride Place, to a point 24.5 feet north of the southwest corner of said Lot 22; thence easterly along a line parallel to the south line of said Lot 22 a distance of 180 feet to a point on the east line of said Lot 22 and 24.5 feet north of the southeast corner of said lot; thence easterly a distance of 20 feet along a line parallel to the south line of said Lot 22 to a point on the centerline of Broadmoor Street (originally platted as Merritt Avenue); thence northerly along the centerline of Broadmoor Street approximately 371.5 feet to a point on the centerline of 80th Street; thence westerly along the centerline of 80th Street a distance of approximately 528.5 feet to the Point of Beginning.

EXHIBIT C-2

THE DISTRICT – MAP

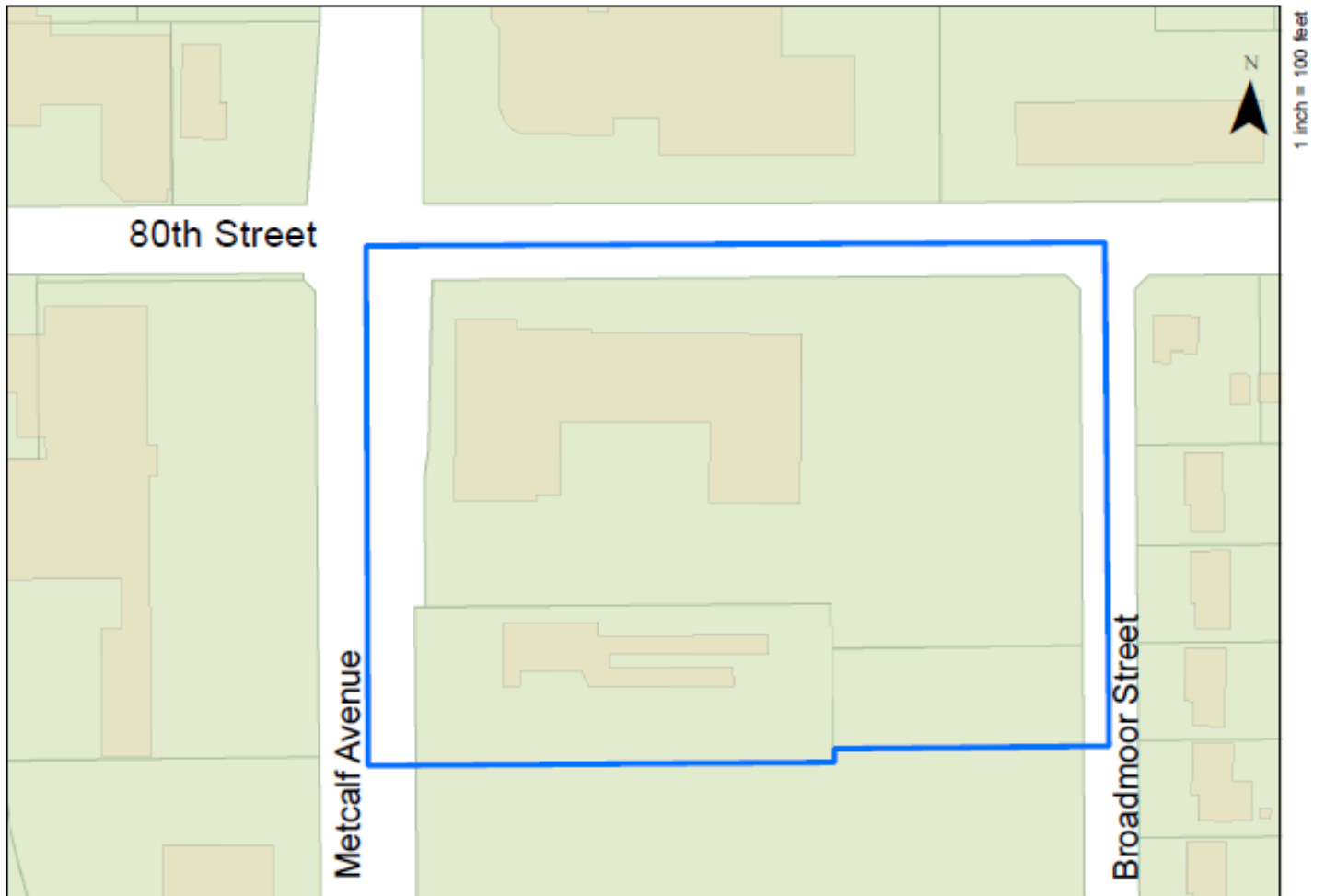


EXHIBIT D

THE PROJECT

**To be Added from Approved Form Base Code Plan
to be approved by the Planning Commission and City Council**

EXHIBIT E

PROJECT BUDGET/TIF IMPROVEMENTS BUDGET

CROSSROADS 80 PROJECT BUDGET

	Total Cost		TIF		Private
SOURCES OF FUNDS		Total			
Equity		10,197,924			10,197,924
Financing	\$	30,593,771	\$	7,613,717	\$ 22,980,054
TOTAL SOURCES OF FUNDS	\$	40,791,695	\$	7,613,717	\$ 33,177,978
USES OF FUNDS					
Land					
Land Acquisition	\$	4,000,000	\$	4,000,000	\$ -
Closing Costs	\$	62,500	\$	-	\$ 62,500
Other	\$	-	\$	-	\$ -
Subtotal - Land	\$	4,062,500	\$	4,000,000	\$ 62,500
		\$ 4,062,500	\$ 4,000,000	\$ 62,500	
Sitework					
Demolition/ Site Clearing	\$	150,000	\$	150,000	\$ -
Other	\$	-	\$	-	\$ -
Subtotal - Sitework	\$	150,000	\$	150,000	\$ -
Construction					
Apartment Construction	\$	21,749,400	\$	-	\$ 21,749,400
Retail/Office Construction	\$	1,280,000	\$	-	\$ 1,280,000
Parking Structure	\$	4,887,000	\$	3,463,717	\$ 1,423,283
Less: Sales Tax on Construction materials	\$	(1,730,000)			\$ (1,730,000)
Other	\$	-	\$	-	\$ -
Subtotal - Construction	\$	26,186,400	\$	3,463,717	\$ 22,722,683
Tenant Improvements					
Retail/Office (Allowance & Buildout)	\$	640,000	\$	-	\$ 640,000
Other	\$	-	\$	-	\$ -
Subtotal - Tenant Improvements	\$	640,000	\$	-	\$ 640,000
Infrastructure Improvements					
KCPL	\$	600,000	\$	-	\$ 600,000
Street Improvements	\$	500,000	\$	-	\$ 500,000
Utilities	\$	1,000,000	\$	-	\$ 1,000,000
Other	\$	-	\$	-	\$ -
Subtotal - Infrastructure Improvements	\$	2,100,000	\$	-	\$ 2,100,000
Construction Contingency					
Construction Contingency	\$	500,000	\$	-	\$ 500,000
Open	\$	-	\$	-	\$ -
Subtotal - Construction Contingency	\$	500,000	\$	-	\$ 500,000
		\$ 29,576,400	\$ 3,613,717	\$ 25,962,683	

CROSSROADS 80 PROJECT BUDGET

	Total Cost	TIF	Private
Professional Fees			
Architectural Services	\$ 892,130	\$ -	\$ 892,130
Geotechnical Engineering	\$ 6,800	\$ -	\$ 6,800
Surveys	\$ 5,000	\$ -	\$ 5,000
Environmental	\$ 10,000	\$ -	\$ 10,000
Special Inspections	\$ 60,000	\$ -	\$ 60,000
Traffic Studies	\$ 10,000	\$ -	\$ 10,000
Other	\$ -	\$ -	\$ -
Subtotal - Professional Fees	\$ 983,930	\$ -	\$ 983,930
Furniture, Fixtures and Equipment			
Furniture, Fixtures and Equipment	\$ 574,000	\$ -	\$ 574,000
Other	\$ -	\$ -	\$ -
Subtotal - FF&E	\$ 574,000	\$ -	\$ 574,000
Soft Costs			
Building Permits	\$ 100,000	\$ -	\$ 100,000
Market/Feasibility Studies	\$ 6,000	\$ -	\$ 6,000
Construction Management	\$ 900,000	\$ -	\$ 900,000
Utility Tap Fees	\$ 300,000	\$ -	\$ 300,000
Taxes during construction	\$ 200,000	\$ -	\$ 200,000
Start Up Reserves	\$ 175,645	\$ -	\$ 175,645
Marketing	\$ 50,000	\$ -	\$ 50,000
Insurance	\$ 125,000	\$ -	\$ 125,000
Development Fee	\$ 900,000	\$ -	\$ 900,000
Legal Fees	\$ 250,000	\$ -	\$ 250,000
Other	\$ -	\$ -	\$ -
Subtotal - Soft Costs	\$ 3,006,645	\$ -	\$ 3,006,645
Soft Cost Contingency			
Soft Cost Contingency	\$ 500,000	\$ -	\$ 500,000
Open	\$ -	\$ -	\$ -
Subtotal - Soft Cost Contingency	\$ 500,000	\$ -	\$ 500,000
	\$ 5,064,575	\$ -	\$ 5,064,575
Financing			
Construction Loan Interest	\$ 1,049,800	\$ -	\$ 1,049,800
Loan Origination Fee	\$ 150,000	\$ -	\$ 150,000
Guarantor Fee	\$ 500,000	\$ -	\$ 500,000
Loan Registration Fee	\$ 382,420	\$ -	\$ 382,420
Appraisal	\$ 6,000	\$ -	\$ 6,000
Subtotal - Construction Financing	\$ 2,088,220	\$ -	\$ 2,088,220
	\$ 2,088,220	\$ -	\$ 2,088,220
TOTAL USES OF FUNDS	\$ 40,791,695	\$ 7,613,717	\$ 33,177,978

EXHIBIT F

PERFORMANCE MILESTONES

1. Demolition of the Existing Buildings - _____, 2015
2. Commencement of Construction - _____, 2015
3. Completion of Construction - _____, 2015

EXHIBIT G
EQUITY IRR FORMULA

CROSSROADS 80 PROJECT - EQUITY IRR		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
<u>Operating Income</u>												
	Apartments	-	-	1,233,317	3,288,840	3,387,505	3,489,130	3,593,804	3,701,618	3,812,666	3,927,046	4,044,858
	Retail	-	-	-	320,000	320,000	329,600	339,488	349,673	360,163	370,968	382,097
	Other Rental Income	-	-	205,131	600,240	618,247	636,795	655,898	675,575	695,843	716,718	738,219
	Total Potential Gross Rental Income	-	-	1,438,448	4,209,080	4,325,752	4,455,525	4,589,190	4,726,866	4,868,672	5,014,732	5,165,174
	Less: Vacancy Allowance	-	-	-	(210,454)	(216,288)	(222,776)	(229,460)	(236,343)	(243,434)	(250,737)	(258,259)
	Less: Income Concessions	-	-	(7,911)	(23,150)	(23,792)	(24,505)	(25,241)	(25,998)	(26,778)	(27,581)	(28,408)
		-	-	(7,911)	(233,604)	(240,079)	(247,282)	(254,700)	(262,341)	(270,211)	(278,318)	(286,667)
	Gross Income	-	-	1,430,536	3,975,476	4,085,673	4,208,243	4,334,490	4,464,525	4,598,461	4,736,414	4,878,507
<u>Operating Expenses</u>												
	Residential	-	-	(592,460)	(1,348,576)	(1,375,547)	(1,403,058)	(1,431,119)	(1,459,742)	(1,488,936)	(1,518,715)	(1,549,090)
	Management	-	-	(61,299)	(139,531)	(142,321)	(145,168)	(148,071)	(151,033)	(154,053)	(157,134)	(160,277)
	Capital Reserve	-	-	-	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)
	Total Operating Expenses	-	-	(653,759)	(1,534,106)	(1,563,868)	(1,594,226)	(1,625,190)	(1,656,774)	(1,688,990)	(1,721,849)	(1,755,366)
OPERATING INCOME (before debt service)		-	-	776,777	2,441,369	2,521,804	2,614,017	2,709,300	2,807,751	2,909,471	3,014,565	3,123,140
<u>Debt Service</u>												
	Principal	-	-	-	(523,481)	(657,597)	(691,241)	(726,607)	(763,781)	(802,858)	(843,933)	(887,111)
	Interest	-	-	-	(1,265,000)	(1,488,580)	(1,454,936)	(1,419,571)	(1,382,397)	(1,343,320)	(1,302,244)	(1,259,067)
	Total Debt Service	-	-	-	(1,788,481)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)
NET INCOME (after debt service)		-	-	776,777	652,888	375,627	467,839	563,122	661,573	763,293	868,387	976,963
<u>Net Proceeds to Developer Equity</u>												
	Sales Price - NOI Capitalized	6%										
	Less marketing \ Sales costs	0.0075										
	Less Remaining Debt											
Net Sales Proceeds		-	-	-	-	-	-	-	-	-	-	-
Equity Return		(4,236,490)	(5,961,434)	776,777	652,888	375,627	467,839	563,122	661,573	763,293	868,387	976,963
	Equity IRR	13.8%										
Tax Increment Applied to Project		-	-	16,531	97,773	352,873	359,600	366,461	373,459	380,598	387,879	395,306
	CUMULATIVE TIF INCREMENT	7,613,717										
Equity Return INCLUDING TIF PROCEEDS		(4,236,490)	(5,961,434)	793,308	750,661	728,500	827,439	929,583	1,035,032	1,143,891	1,256,266	1,372,269
	Equity IRR	15.3%										

CROSSROADS 80 PROJECT - EQUITY IRR		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Operating Income												
	Apartment	4,166,204	4,291,190	4,419,925	4,552,523	4,689,099	4,829,772	4,974,665	5,123,905	5,277,622	5,435,951	5,599,029
	Retail	393,560	405,366	417,527	430,053	442,955	456,243	469,931	484,029	498,550	513,506	528,911
	Other Rental Income	760,366	783,177	806,672	830,873	855,799	881,473	907,917	935,154	963,209	992,105	1,021,868
	Total Potential Gross Rental Income	5,320,129	5,479,733	5,644,125	5,813,449	5,987,852	6,167,488	6,352,513	6,543,088	6,739,381	6,941,562	7,149,809
	Less: Vacancy Allowance	(266,006)	(273,987)	(282,206)	(290,672)	(299,393)	(308,374)	(317,626)	(327,154)	(336,969)	(347,078)	(357,490)
	Less: Income Concessions	(29,261)	(30,139)	(31,043)	(31,974)	(32,933)	(33,921)	(34,939)	(35,987)	(37,067)	(38,179)	(39,324)
		(295,267)	(304,125)	(313,249)	(322,646)	(332,326)	(342,296)	(352,564)	(363,141)	(374,036)	(385,257)	(396,814)
	Gross Income	5,024,862	5,175,608	5,330,876	5,490,803	5,655,527	5,825,192	5,999,948	6,179,947	6,365,345	6,556,305	6,752,995
Operating Expenses												
	Residential	(1,580,071)	(1,611,673)	(1,643,906)	(1,676,784)	(1,710,320)	(1,744,526)	(1,779,417)	(1,815,005)	(1,851,305)	(1,888,331)	(1,926,098)
	Management	(163,482)	(166,752)	(170,087)	(173,489)	(176,959)	(180,498)	(184,108)	(187,790)	(191,546)	(195,377)	(199,284)
	Capital Reserve	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)	(46,000)
	Total Operating Expenses	(1,789,554)	(1,824,425)	(1,859,993)	(1,896,273)	(1,933,279)	(1,971,024)	(2,009,525)	(2,048,795)	(2,088,851)	(2,129,708)	(2,171,382)
	OPERATING INCOME (before debt service)	3,235,308	3,351,183	3,470,883	3,594,529	3,722,248	3,854,168	3,990,423	4,131,151	4,276,494	4,426,597	4,581,612
Debt Service												
	Principal	(932,497)	(980,205)	(1,030,354)	(1,083,069)	(1,138,481)	(1,196,728)	(1,257,955)	(1,322,314)	(1,389,966)	(1,461,079)	(1,535,831)
	Interest	(1,213,681)	(1,165,973)	(1,115,823)	(1,063,109)	(1,007,697)	(949,450)	(888,223)	(823,864)	(756,212)	(685,098)	(610,347)
	Total Debt Service	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)	(2,146,178)
	NET INCOME (after debt service)	1,089,131	1,205,005	1,324,705	1,448,352	1,576,070	1,707,990	1,844,246	1,984,974	2,130,316	2,280,420	2,435,435
Net Proceeds to Developer Equity												
	Sales Price - NOI Capitalized	6%										76,360,204
	Less marketing \ Sales costs	0.0075										(572,702)
	Less Remaining Debt											(11,368,683)
	Net Sales Proceeds	-	-	-	-	-	-	-	-	-	-	64,418,819
	Equity Return	1,089,131	1,205,005	1,324,705	1,448,352	1,576,070	1,707,990	1,844,246	1,984,974	2,130,316	2,280,420	66,854,254
	Equity IRR	13.8%										
	Tax Increment Applied to Project	402,882	410,609	418,490	426,530	434,730	443,094	451,625	460,327	469,203	478,256	487,491
	CUMULATIVE TIF INCREMENT	7,613,717										
	Equity Return INCLUDING TIF PROCEEDS	1,492,013	1,615,614	1,743,195	1,874,882	2,010,800	2,151,084	2,295,871	2,445,301	2,599,519	2,758,676	67,341,745
	Equity IRR	15.3%										

CROSSROADS 80 PROJECT														
PROPERTY TAX INCREMENT			TIF Year:	0	1	2	3	4	5	6	7	8	9	10
		Value as of 01/01:	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
		Taxes paid for CY:	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	
BASE PROPERTY VALUATION														
		Market Value as of 01/01/2014	\$3,186,090											
		Base Assessed Value	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	
PROJECTED PROPERTY VALUE AFTER REDEVELOPMENT				\$1,000,000	\$2,000,000	\$5,140,000	\$5,222,800	\$5,307,256	\$5,393,401	\$5,481,269	\$5,570,895	\$5,662,312	\$5,755,559	
INCREMENTAL ASSESSED VALUE				\$203,476	\$1,203,476	\$4,343,476	\$4,426,276	\$4,510,732	\$4,596,877	\$4,684,745	\$4,774,371	\$4,865,788	\$4,959,035	
PROJECTED PROPERTY TAX RATE			81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	
PROJECTED PROPERTY TAX INCREMENT				16,531	97,773	352,873	359,600	366,461	373,459	380,598	387,879	395,306	402,882	
		CUMULATIVE TIF INCREMENT VALUE	7,613,717											

CROSSROADS 80 PROJECT													
PROPERTY TAX INCREMENT			TIF Year:	11	12	13	14	15	16	17	18	19	20
		Value as of 01/01:		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
		Taxes paid for CY:		2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
BASE PROPERTY VALUATION													
		Market Value as of 01/01/2014											
		Base Assessed Value		\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524	\$796,524
PROJECTED PROPERTY VALUE AFTER REDEVELOPMENT				\$5,850,670	\$5,947,683	\$6,046,637	\$6,147,570	\$6,250,521	\$6,355,531	\$6,462,642	\$6,571,895	\$6,683,333	\$6,796,999
INCREMENTAL ASSESSED VALUE				\$5,054,146	\$5,151,159	\$5,250,113	\$5,351,046	\$5,453,997	\$5,559,007	\$5,666,118	\$5,775,371	\$5,886,809	\$6,000,475
PROJECTED PROPERTY TAX RATE				81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242	81.242
PROJECTED PROPERTY TAX INCREMENT				410,609	418,490	426,530	434,730	443,094	451,625	460,327	469,203	478,256	487,491
		CUMULATIVE TIF INCREMENT VALUE											

EXHIBIT H

FORM OF CERTIFICATE OF EXPENDITURE

**CERTIFICATION OF EXPENDITURES
CROSSROADS 80 TIF IMPROVEMENTS**

Date: _____

Certification # _____

Governing Body of the City of Overland Park, Kansas

In accordance with the Crossroads 80 Redevelopment Agreement dated _____, 2014 (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and [_____] (the "Developer"), Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to Developer for the cost of financing the TIF Improvements, as follows:

1. To the best of my knowledge, all amounts are expenses for TIF Improvements that are reimbursable to Developer pursuant to the Agreement.
2. All amounts have been advanced by Developer, successors, assigns, tenants, or transferees for TIF project 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.

Developer further certifies that all insurance policies which Developer is responsible for under the Agreement (i.e., not insurance policies of assignees, tenants, or transferees) are in full force and effect and that Developer is in compliance, in all material respects, with all other 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 Developer who signed this Certificate.

Approved:

City's Representative

By: _____
Its _____

ATTACHMENT A

TO CERTIFICATION OF EXPENDITURES
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 PRIVATE PARKING FACILITIES

THIS COVENANT made and entered into this ___ day of ___, 20___, by and between the City of Overland Park, Kansas, (the “City”), and ___, its successors and assigns (“Owner”).

WHEREAS, Owner has an interest in certain real property generally located at ___ 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 developed as ___, 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 and Owner agree 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.

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.

Section 4. Owner shall be and shall remain liable for and subject to all permits issued to any contractor(s) on behalf of Owner 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, 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 _____, 20__, 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 ____, 20__, 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:

MUNICIPAL CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)

)

COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, 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:

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF ____)

) ss.

COUNTY OF ____)

BE IT REMEMBERED, That on this ____ day of ___, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came (name/s), member(s) of (name of company), a Limited Liability Company duly formed under the provisions of the (state) Limited Liability Company Act, who is/are personally known to me to be the such member(s) and who is/are personally known to me to be the same person(s) who executed as such member(s) the foregoing instrument on behalf of said company, and such person(s) duly acknowledged the execution of 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.

My Appointment Expires

Notary Public

MUNICIPAL CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)

)

COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, 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:

PARTNERSHIP ACKNOWLEDGEMENT

STATE OF ____)

) ss.

COUNTY OF ____)

BE IT REMEMBERED, That on this ____ day of ___, 20 ___, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came ___ who is personally known to me to be the same person who executed the foregoing instrument on his/her own behalf and as a partner of and on behalf of , a Kansas General Partnership and he/she acknowledged that he/she executed the same as his/her free act and deed.

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

My Commission Expires:

Notary Public

Exhibit “A”

Legal Description