

2/13/15 EXECUTIVE SUMMARY
HIGHLANDS VILLAGE DEVELOPMENT AGREEMENT

1. Parties. The City of Overland Park, Kansas (the "City") and Indian Creek Land & Investment Co., L.P., a Delaware limited partnership ("Developer").

2. Nature of the Agreement. Generally, this is an agreement to govern the City's relationship with Developer in connection with a transportation development district ("TDD") created by the City in May of 2008 for certain property located along Indian Creek Parkway (a.k.a 107th Street) between Roe Avenue and Nall. Pursuant to the terms of a Memorandum of Understanding (the "MOU"), the Developer undertook, among other things, a flood control project to excavate a wider flood passage along the over bank of Indian Creek between Roe Avenue and Mission Road, in the general vicinity of Indian Creek's crossing of I-435. Pursuant to the terms of the MOU, Developer also previously constructed an extension and completion of Indian Creek Parkway from Nall Avenue to Roe Avenue to collector standards and other transportation-related projects, which projects are eligible for reimbursement from TDD proceeds (the "Completed TDD Improvements"). This Agreement is somewhat unusual for the City (at least as compared with other Development Agreements the City has recently entered into with developers) because the Developer has fully-completed all of the TDD Improvements and the Developer has also sold off many of the parcels in within the geographic boundaries of the TDD, including the sites for Freddy's Frozen Custard and Steakburgers, the Lodge at Highlands Village, Heartland Rehab Hospital, Advanced Healthcare of Overland Park, E Café, and Top Golf. Accordingly, this Development Agreement is more limited than most that you have reviewed recently because it only governs two things: (a) the process for payment of TDD proceeds for the Completed TDD Improvements and certain "Future TDD Improvements" (as described below), and (b) the development of the remaining seven (7) parcels in the District which Developer plans to sell, lease or otherwise convey to third parties for future development.

3. The Developer's Project. In Section 2.1, the City acknowledges completion of the Completed TDD Improvements, and the Developer telegraphs that it may construct future TDD improvements in connection with the 7 parcels that it has not yet sold, which future TDD improvements would be likely to include parking improvements, drives, sidewalks and the other eligible improvements described on Exhibit A-2 ("Future TDD Improvements").

4. The TDD. The TDD was established in 2008 and the TDD sales tax was subsequently imposed in the District (as of January 1, 2015) and provides for a 1% additional sales tax for a period of up to 22 years. This TDD is pay-as-you-go only, with no opportunity to issue bonds. The Developer may receive TDD sales tax revenues for eligible project costs related to the Completed TDD Improvements and, if and when applicable, the Future TDD Improvements, up to a TDD cap of \$7,200,000. All of the TDD expenses to be reimbursed (including the Future TDD Improvements on the parcels to be purchased by third parties) will be submitted through Developer in accordance with the City's normal Certificate of Expenditures process as described in Section 4.2. Also, the Developer agrees that there shall be no TDD reimbursements for Future TDD Improvements related to certain uses described on Exhibit I, including car washes, pawn shops, pay-day loan facilities or e-cigarette stores.

5. Payment of City's Costs/Administrative Fee. Section 8.1 of the Agreement requires that the Developer will pay the City's costs for negotiating this agreement and implementing the TDD. More specifically, it provides for an Administrative Fee in an amount equal to the greater of \$5,000 or 1% of the TDD Sales Tax collected during any year of the Agreement on an ongoing basis.

6. Assignment Rights. In Section 6.1, the parties generally agree that Developer may not assign this Agreement without the approval of the City's governing body (in your sole discretion). However, Section 6.3 allows certain assignments by Developer without City consent or approval – namely, (a) transfers to Developer's

affiliates, (b) security interests granted to construction or permanent lenders, and (c) sales or leases to retail tenants and operators prior to the date of this Agreement. Also, if Developer desires to sell or convey the 7 parcels that it still owns in the Project, the buyers will take that property subject to the terms of this Agreement (because we record a Memorandum of this Agreement against the ground in the Johnson County land records), and the Developer will remain responsible for the buyer's performance if they fail to live up to the terms and conditions of this Agreement that do run with the land.

7. Use and Operation. Because of the unique circumstances related to this Agreement, Article V contains somewhat lighter use and operation covenants than the City typically requires, but for the 7 remaining development parcels, the parties agree the City's typical obligations to properly maintain, insure and operate the project, and our typical obligations to pay all of its taxes in the City and to comply with law.

8. Civic and Community Participation. In Section 5.7, Developer agrees, during the term of this Agreement, to actively participate in civic, charitable, educational, and economic development endeavors in Overland Park. Specifically, Developer must, at minimum, (a) be a dues-paying member in good standing with the Overland Park Chamber of Commerce and the Economic Development Council, and (b) make a donation of not less than \$1,000 annually to the Overland Park Arts and Recreation Foundation.

9. Default and Remedies. In Section 7.4 of the Agreement, the parties agree that if the Developer shall default, then the City may (i) refuse to approve any further certificates of expenditures and/or make any further disbursements of TDD Sales Tax to Developer unless and until such default is cured by the Developer, and/or (ii) terminate the TDD and/or the TDD Sales Tax, in which case Developer shall have no further rights to any proceeds or reimbursements, and/or (iii) terminate this Agreement.