

HIGHLANDS VILLAGE DEVELOPMENT AGREEMENT

THIS HIGHLANDS VILLAGE DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this ____ day of ~~March~~June, 2015 (the "Effective Date"), by and between the **CITY OF OVERLAND PARK, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City"); and **INDIAN CREEK LAND & INVESTMENT CO., L.P.**, a Delaware limited partnership, (the "Developer"), pursuant to Resolution No. 4103 adopted by the Governing Body of the City on the 2nd day of March, 2015.

RECITALS:

A. The City has authority to create a transportation development district ("TDD"), pursuant to K.S.A 12-17,140 through 12-17,149, and amendments thereto (the "TDD Act"), for the purpose of financing transportation-related projects. Under the TDD Act, the owners of all land within the proposed TDD boundaries may petition the City to request the creation of a TDD and to impose a TDD Sales Tax (as defined in Section 3.2 below) to pay the cost of a transportation development project and/or to repay special obligation bonds issued by the City to finance such projects.

B. The Developer previously assembled certain land in the City located generally at 107th Street between Nall and Roe Avenue, and commonly referred to as Highlands Village, on which a mixed-use development is being designed and constructed by and through the Developer (the "Development").

C. In 2007, the City and Developer entered into a Memorandum of Understanding (the "MOU"), which MOU provided for, 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 (the "Flood Control Project"). Pursuant to the terms of the MOU, Developer agreed to and has (i) donated certain easements and right-of-way necessary for the Flood Control Project, (ii) accepted soil and rock materials excavated from the Flood Control Project, (iii) contributed twenty five percent (25%) of the final cost of the Flood Control Project, not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000).

D. Pursuant to the MOU, and in connection with the Development, Developer has previously constructed an extension and completion of Indian Creek Parkway (a.k.a. 107th Street) from Nall Avenue to Roe Avenue to collector standards and other transportation-related projects, which projects are eligible for reimbursement with TDD Sales Tax as more particularly set forth herein. A more particular description of such projects is attached hereto as **Exhibit A-1** (the "Completed TDD Improvements"). Developer also contemplates certain future Eligible Expenses which may be incurred by Developer in the future on the Property (as defined below) for parking and other transportation-related improvements on the Property as generally described on **Exhibit A-2** (the "Future TDD Improvements"). Collectively, the Completed TDD Improvements and the Future TDD Improvements shall be referred to herein as the "TDD Improvements." The MOU contemplated the creation of a TDD to reimburse Developer for the costs of the TDD Improvements.

E. On March 11, 2008, Developer, who was the only property owner of record at that time, submitted a petition (the "TDD Petition") to create the Highlands Village Transportation Development District (the "Highlands Village TDD" or the "District"). The TDD Petition was subsequently amended and restated by the filing of an Amended Petition on April 3, 2008 (the "First Amended TDD Petition"). A copy of the TDD Petition is attached hereto as **Exhibit B**. A copy of the First Amended TDD Petition is attached hereto as **Exhibit C**. A legal description of the boundaries of the District is set forth on **Exhibit D** attached hereto. A map showing the boundaries of the District is attached hereto as **Exhibit E**.

F. On May 12, 2008, the City approved the creation of the Highlands Village TDD through the adoption of Resolution No. 3675 (the "TDD Resolution"), a copy of which is attached hereto as **Exhibit F-1**. The TDD Resolution approved the TDD Improvements to be financed with the proceeds of TDD bonds payable from revenues received from the imposition of a TDD Sales Tax. The TDD Sales Tax was, at that time, set to commence on April 1, 2012, or any other effective date the City may approve upon written request by all owners of record within the District.

G. On October 13, 2011, Developer filed a Petition for Delay of the Effective Date of the Highlands Village TDD Sales Tax from April 1, 2012 to April 1, 2017.

H. On November 7, 2011, the Governing Body of the City did grant the request to delay the effective date of the TDD Sales Tax to April 1, 2017 by adoption of Resolution No. 3907, a copy of which is attached hereto as **Exhibit F-2**.

I. On August 14, 2014, Developer filed a Petition Requesting Pay-As-You-Go Financing and for Acceleration of the Effective Date of the Highlands Village TDD Sales Tax from April 1, 2017 to January 1, 2015 (the "Second Amended Petition").

J. On August 18, 2014, the Governing Body of the City did grant the request to allow for pay-as-you-go financing with the TDD Sales Tax by adoption of Resolution No. 3675, A a copy of which is attached hereto as **Exhibit F-3** and to accelerate the effective date of the TDD Sales Tax to January 1, 2015 by adoption of Resolution No. 4077, a copy of which is attached hereto as **Exhibit F-4**.

K. Developer has, subsequent to the establishment of the District in 2008, sold or otherwise conveyed portions of the real property within the District to third parties for various development projects (including a Freddy's Frozen Custard and Steakhburgers, the Lodge at Highlands Village, Heartland Rehab Hospital, Advanced Healthcare of Overland Park, E Café, ~~and Top Golf, and a carwash~~). However, Developer remains the owner of portions of the property in the District which are identified and outlined in blue on the map attached hereto as **Exhibit G** and legally described on **Exhibit H** (the "Property").- The parties understand and agree that the green cross-hatched areas on Exhibit G are also owned by Developer at this time but that such green areas are undevelopable and not intended to be governed by the terms and conditions of this Agreement. Certain provisions of this Agreement will govern and pertain to the Property, but not the balance of the District.

K.L. The Parties now desire to enter into this Agreement to formalize agreements of the parties in connection with the construction and financing of the TDD Improvements.

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

ARTICLE I. DEFINITIONS AND RULES OF CONSTRUCTION

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

Section 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.

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

Section 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

Section 2.1 Completion of the TDD Improvements. The parties hereby agree as follows:

(a) The Completed TDD Improvements. The Developer hereby represents and warrants to the City that it has constructed and finished all of the Completed TDD Improvements in conformance with the Revised Preliminary Development Plan, Final Development Plan, related stipulations, and City building codes, City Ordinances and all other Applicable Laws and Requirements. The City hereby acknowledges that all of the Completed TDD Improvements have been completed on or before the date of this Agreement.

(b) The Future TDD Improvements. The Developer hereby represents and warrants to the City that it may construct and complete certain Future TDD Improvements in conformance with the Revised Preliminary Development Plan, Final Development Plan, related stipulations, and City building codes, City Ordinances and all other Applicable Laws and Requirements.

(c) Non-TDD Improvements. Some of the vertical (non-TDD) improvements that constitute the Development have already been constructed and opened, including the Lodge at Highlands Village, Heartland Rehab Hospital, Advanced Healthcare of Overland Park and Freddy's Frozen Custard and Steakburgers, while other improvements that constitute the Development are in the process of being constructed, including Top Golf ~~and~~, E Café, and the carwash. Other than those described in the preceding sentence, before Developer's commencement of construction or development of any other buildings, structures or other work or improvement in the District, the 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.

Section 2.2 Cost of the TDD Improvements and Balance of the Development. The actual Eligible Expenses for Developer's Completed TDD Improvements shall all be submitted in a single Certificate of Expenditure pursuant to the terms of Section 4.2 hereof, and Developer shall submit subsequent Certificates of Expenditure for the Eligible Expenses for the Future TDD Improvements as and when the same are incurred from time to time (collectively, the "TDD Improvement Costs"). The TDD Improvement Costs shall be reimbursed to Developer as set forth in Article IV below. Other than the TDD Improvements, the Developer understands and agrees that all of the other costs of completing the Development shall be funded by Private Funds (as defined in Section 3.1 below).

Section 2.3 Relationship of the City and Developer. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City.

Section 2.4 Indemnification. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (each, a "City Indemnified Party") and collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses,

including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the Development by Developer; (ii) the management, design, construction, development and completion of the Development, including the TDD Improvements, by the Developer; (iii) the use or occupation of the Development 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 relating to the Property; (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 Development which is within or under the control of the Developer or pursued at Developer's request for the benefit of or on behalf of the Developer; (vii) the Developer's actions and undertaking in implementation of the Development 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.

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

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

defend, contest or otherwise protect against such Action), the City Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer and, within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the City Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

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

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

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

Section 2.5 Insurance. 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 Property 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 Property. 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 Property.

Section 2.6 Non-Discrimination.

(a) The Developer agrees that throughout the Term:

1. 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;

2. 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");

3. 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;

4. 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

5. The Developer shall include the provisions of paragraphs (1) through (4) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

(b) 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 Development and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Development.

ARTICLE III. TDD FINANCING

Section 3.1 Source of Funds. The costs of the Development (the "Project Costs") will generally be funded by private equity and debt ("Private Funds"). Subject to the terms and conditions of this Agreement, the TDD Improvement Costs which are legally eligible for reimbursement to Developer under the TDD Act, up to an amount equal to Seven Million Two Hundred Thousand and 00/100 Dollars (\$7,200,000.00) (the "Eligible Expenses"), shall be reimbursed with available TDD Sales Tax proceeds. No new TDD Improvement Costs will be added to the Highlands Village TDD without the express consent and approval of the Governing Body of the City. Developer, using private equity and debt, has initially advanced all of the costs for the design, development and construction of the Completed TDD Improvements. Developer or its permitted successors and assigns, using private equity and debt, shall advance all of the costs for the design, development and construction of any Future TDD Improvements. Developer, subject to the terms and conditions of this Agreement, shall be reimbursed for the

Eligible Expenses from and to the extent of the TDD Sales Tax proceeds collected during the Term.

Section 3.2 TDD Sales Tax. The parties hereby agree that Eligible Expenses shall be financed and paid for only with Pay-As-You-Go TDD Financing, payable from revenues received from the imposition of a TDD sales tax in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers' Sales Tax Act (K.S.A. 79-3601 et seq.) within the District (the "TDD Sales Tax"). On August 21, 2014, the City delivered a copy of the TDD Resolution to the Kansas Department of Revenue ("DOR") imposing the TDD Sales Tax effective January 1, 2015. The Developer hereby represents that it has provided to the DOR a list of tenants within the District within the timeframes required by the DOR, so that the DOR was able to notify tenants within the District of the requirement of the tenant to impose a TDD Sales Tax beginning on January 1, 2015. The Developer shall continue to provide ongoing information to the DOR regarding new tenants in the District. At the time the list of tenants is provided to the DOR, the Developer shall also provide a copy to the City.

Section 3.3 TDD Sales Tax Fund. During the Term of this Agreement, all TDD Sales Taxes generated within the Highlands Village TDD shall be deposited into the "TDD Sales Tax Fund," which shall be established and administered by the City in compliance with the laws of the State and this Agreement.

Section 3.4 Pay-As-You-Go TDD Financing. The parties hereby agree that the proceeds from the TDD Sales Tax shall be disbursed by the City to Developer from the TDD Sales Tax Fund quarterly on a pay-as-you-go basis ("Pay-As-You-Go TDD Financing") to reimburse Developer for Eligible Expenses, if and to the extent that (i) there are TDD Sales Tax funds in the TDD Sales Tax Fund, (ii) Developer has fully satisfied all of the Pay/Go Conditions (as defined below), (iii) the term of the TDD Collection Period (as defined below) has not yet expired, and (iv) Developer has not already been reimbursed for Eligible Expenses in an amount in excess of the maximum authority set out in the definition of "Eligible Expenses." For purposes hereof, the term "TDD Collection Period" means the period that commences on the date that the TDD Sales Tax is imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TDD Financing, or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the TDD Sales Tax is first imposed.

Section 3.5 Conditions Precedent to Pay-As-You-Go Reimbursement. Developer hereby understands and agrees that it shall not receive any reimbursements for Eligible Expenses from Pay-As-You-Go TDD Financing, unless and until:

- (a) The costs and expenses for which Developer seeks reimbursement must in all events be Eligible Expenses;
- (b) The City has approved Certificates of Expenditure in accordance with Article IV of this Agreement;

(c) 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 (subsections 3.5(a) – (c) collectively referred to herein as the “Pay/Go Conditions”).

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

Section 3.7 No TDD for Certain Uses. Developer hereby understands and agrees that it shall not be entitled to any Pay-As-You-Go TDD Financing to reimburse the costs of Future TDD Improvements related to any of the uses described on **Exhibit I** attached hereto.

Section 3.8 Payment of TDD Administrative Fee. As and when there are sufficient TDD Sales Tax revenues from the District to pay the TDD Administrative Fee, Developer hereby understands and agrees that such TDD Administrative Fee shall first be paid to the City prior to the payment of Eligible Expenses from the TDD Sales Tax Fund from Pay-As-You-Go TDD Financing.

ARTICLE IV. TDD REIMBURSEMENT

Section 4.1 TDD Reimbursement. Subject to Article III of this Agreement, TDD Sales Tax shall be used to reimburse the Developer for the Eligible Expenses by Pay-As-You-Go TDD Financing. In no event will the reimbursement described hereunder exceed Seven Million Two Hundred Thousand and 00/100 Dollars (\$7,200,000.00).

Section 4.2 Certification of Expenditures. Developer shall certify all costs and expenditures made in connection with the TDD Improvements in accordance with the following:

(a) The Developer shall submit to the City a Certification of Expenditure in the form attached hereto as **Exhibit J** setting forth the amount for which reimbursement is sought and an itemized listing of the related TDD Improvements. Prior to or concurrently with the first Certification of Expenditure submitted to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Such documentation shall include, but may not be limited to:

1. A scalable “General Layout” plan sheet showing the general layout and location of the TDD eligible items. Non-eligible items shall be clearly differentiated from eligible items.
2. A summary of plan quantities delineating the eligible items from non-eligible items.

3. 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 Certification 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 Certification of Expenditure is submitted, to examine the Developer's and other's records relating to all costs of TDD 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 Certification of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditure relates to the TDD Improvements; (2) the Eligible Expense was incurred; (3) Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditure and reimburse the Developer for financing the cost of the TDD Improvements pursuant to the terms of this Agreement. If the City reasonably disapproves of the Certification of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such sixty (60) day period.

(e) Within one-hundred eighty (180) days of execution of this Agreement, the Developer shall submit a Certification of Expenditures for those expenditures made prior to the execution of this Agreement in connection with the TDD Improvements. During the Term, the Developer shall endeavor to submit Certifications of Expenditures for those expenditures made in connection with the TDD Improvements on a quarterly basis, and shall submit a Certification of Expenditures for any expenditure made in connection with a TDD Improvement within one-hundred eighty (180) days of incurring such expenditure.

ARTICLE V. USE AND OPERATION OF THE DEVELOPMENT

Section 5.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the last day of the TDD Collection Period (the "Term"). Notwithstanding the foregoing, the City hereby agrees that at any time Developer may terminate this Agreement by thirty (30) days prior written notice to the City. Upon any such termination by Developer, the parties hereby agree that (i) the City may terminate the TDD and/or the TDD Sales Tax, and

Developer shall have no further rights to any proceeds or reimbursements therefrom, and (ii) neither party shall have any further obligations under this Agreement, except to the extent set forth in Section 8.15 below.

Section 5.2 Maintenance and Use. During the Term, Developer shall cause the Property 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 senior living, multi-family housing and retail space, as applicable, 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 on the Property.

Section 5.3 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 Property. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any government authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement.

Section 5.4 Payment of Taxes and Liens. The Parties hereby agree as follows:

(a) During the Term of this Agreement, Developer and its Affiliates shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Developer or any of its Affiliates 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 TDD Financing during any time that such real estate taxes and assessments on the property the Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliates from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer or its Affiliates shall pay any and all amounts that are contested under protest while any such proceedings are pending. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Property.

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the Property, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith

said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 5.5 Licenses and Permits. Developer hereby recognizes, stipulates and agrees (a) that in the design, construction, completion, use or operation of any portion of the Development located on the Property, Developer, or its general contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

Section 5.6 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 Property 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 Development. Nothing contained in this Section 5.6 shall restrict or impede the right of the City to enter the Property or any other portion of the District pursuant to any Applicable Laws and Requirements.

Section 5.7 Civic and Community Participation. During the Term of this Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Overland Park. Accordingly, at a minimum, Developer shall (a) at all times be a dues-paying member in good standing with (i) the Overland Park Chamber of Commerce, and (ii) the Overland Park Economic Development Council, and (b) Developer shall make an annual donation to the Overland Park Arts and Recreation Foundation in an amount determined in the sole discretion of Developer, but not to be less than \$1,000 annually.

Section 5.8 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 VI. ASSIGNMENT AND TRANSFER

Section 6.1 Assignments by Developer. The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City's governing body, in its sole discretion, following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications, experience 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 Property 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 Property, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Department of Records and Tax Administration of Johnson County, Kansas, in a timely manner following the execution of such agreements.

Section 6.2 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 Development 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 Development except the Developer shall be entitled to any rights whatsoever or claim upon the reimbursements from the TDD Sales Tax, except as specifically authorized in writing by the Developer and the City.

Section 6.3 Exceptions. The foregoing restrictions in this Article VI shall not apply to (i) any security interest granted to secure indebtedness to any construction or permanent lender, (ii) the sale, rental and leasing of portions of the District which have occurred prior to the Effective Date; or (iii) any assignment of some or all of the rights and/or obligations under this Agreement to a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer (an "Affiliate"), provided that any such Affiliate shall have a net worth which is equal to or greater than that of the Developer immediately prior to such transfer. Developer hereby agrees to provide the City with written notice of any assignment permitted by this Section 6.3 within ten (10) days after such assignment, as well as any transfer of some or all of the Property within ten (10) days of such transfer.

ARTICLE VII. DEFAULTS AND REMEDIES

Section 7.1 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.

Section 7.2 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.

Section 7.3 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 ten (10) days after the City has given Developer written notice specifying such default; or

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

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

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

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

Section 7.4 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 TDD Sales Tax 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 therefrom, and/or (iii) terminate this Agreement. The rights and remedies reserved by the City under this Section 7.4 shall be

construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

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

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

Section 7.5 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.

1. 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.

2. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

Section 7.6 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.

Section 7.7 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. Nothing herein shall excuse Developer from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.1 Expenses of the City and TDD Annual Administrative Fee. Developer shall be responsible for, and pay, within thirty (30) days of the invoice, the reasonable legal fees of the City incurred in connection with the creation and implementation of the District and this Agreement (including the negotiation of this Agreement), any related agreements and any amendments thereto, and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses, pursuant to the terms of Section 4.2. In addition to the amounts described above, the Developer hereby agrees to pay the City an administrative fee (the "TDD Administrative Fee") as follows:

(a) The TDD Sales Tax shall be used from time to time to pay the Administrative Fee for the District. The annual Administrative Fee for the District shall be an amount equal to the greater of \$5,000 per year or 1% of the TDD Sales Tax proceeds deposited into the TDD Sales Tax Fund hereunder from time to time during the Term and such TDD Administrative Fee shall be due and payable on the date the TDD Sales Tax is received by the City from DOR (provided that the TDD Act permits payment directly from the TDD Sales Tax, and if not, within thirty (30) days of demand therefor by the City).

Section 8.2 Time of Essence. Time is of the essence of this Agreement. The City and Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.3 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest.

Section 8.4 Immunity of Officers, Employees and Members of the City. No personal recourse shall be had 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.

Section 8.5 Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the TDD Improvements as pertinent to the purposes of this Agreement.

Section 8.6 Right of Access. For the purposes of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, without charges or fees, at normal construction hours during the period of construction for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements.

Section 8.7 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.

Section 8.8 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.

Section 8.9 Kansas Law and Order of Precedence. This Agreement shall be construed in accordance with the laws of the State of Kansas.

Section 8.10 Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Indian Creek Land & Investment Co., L.P.
4000 Main Street
Kansas City, MO 64111
Attn: Perry Sutherland

With copies to:

Curtis J. Petersen, Esq.
Polsinelli PC
6201 College Blvd., Suite 500
Overland Park, KS 66211

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, Esq., Deputy City Attorney
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 8.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 8.12 Agreement Runs With the Land. The parties understand and agree that, with respect to the Property, this Agreement runs with the land.

Section 8.13 Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Johnson County, Kansas against the Property, and Developer shall promptly record such memorandum at Developer's cost and deliver a recorded copy of such memorandum to the City.

Section 8.14 Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

Section 8.15 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 the Term.

Section 8.16 Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 8.17 Tax Implications. The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

Section 8.18 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.

Section 8.19 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.

Section 8.20 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. §§10-1112 and 10-1113), the Budget Law (K.S.A. § 79-2935), 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 the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

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

INDIAN CREEK LAND & INVESTMENT CO., L.P.
A Delaware limited partnership

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2015, before me personally appeared _____ to me personally known, who being by me duly sworn did say that he/she is the _____ of INDIAN CREEK LAND & INVESTMENT CO., L.P., a Delaware limited partnership, and that said instrument was signed and delivered on behalf of said limited partnership and acknowledged to me that he/she executed the same as the free act and deed of said limited partnership.

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

NOTARY PUBLIC

My Commission Expires:

[SEAL]

ANNEX OF DEFINITIONS

The following terms have the following meanings:

“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 2.4(c) hereof.

“Affiliates” means a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer as set forth in Section 6.3 hereof.

“Agreement” means this Agreement as may be amended in accordance with the terms 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, any approved preliminary and final development plans, the Act, the Kansas Cash Basis Law (K.S.A. § 10-1100, et. seq.) and Budget Law (K.S.A. § 75-2935 et. seq.).

“Certificate” means the certificate of liability insurance listing all coverages applicable to the Development as set forth in Section 2.5 hereof.

"Certificate of Expenditure" means the certification of expenditures to be provided to the City by Developer for Eligible Expenses on the form attached hereto as **Exhibit J**, as described in Section 4.2 of this Agreement.

“City” means the City of Overland Park, Kansas.

"City Indemnified Party" or "City Indemnified Parties" means the City, its employees, agents and independent contractors and consultants as set forth in Section 2.4 of this Agreement.

"Commission" means that Kansas Human Rights Commission" as referenced in Section 2.6(a)(2) of this Agreement.

"Completed TDD Improvements" means the extension and completion of Indian Creek Parkway (a.k.a. 107th Street) from Nall Avenue to Roe Avenue to collector standards and other transportation-related projects completed by Developer as generally described in Recital D and more particularly described on **Exhibit A-1**.

“Developer” means Indian Creek Land & Investment Co., L.P., and its successors and assigns.

“Development” means the mixed-use development project being designed and constructed by Developer and others as referenced in Recital B of the Agreement.

“District” means the Highlands Village Transportation Development District approved by the City, as amended from time to time, the boundaries of which District are described on **Exhibit D** attached hereto.

“Eligible Expenses” means expenses related to the TDD Improvements to the extent such expenses are “costs” or a “project” as defined in the TDD Act; the maximum amount of Eligible Expenses is Seven Million Two Hundred Thousand and 00/100 Dollars (\$7,200,000.00).

“First Amended TDD Petition” means the amended and restated petition filed by Developer on April 3, 2008, as referenced in Recital E hereof.

"Flood Control Project" means the excavation of 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 as contemplated by the MOU and as described in Recital C of this Agreement.

"Future TDD Improvements" means those certain future Eligible Expenses which may be incurred by Developer in the future on the Property for parking and other transportation-related improvements on the Property, as generally described in Recital D and more particularly described on **Exhibit A-2**.

“Highlands Village TDD” means the Highlands Village Transportation Development District approved by the City, as amended from time to time, as referenced in Recital E of the Agreement.

"MOU" means that certain Memorandum of Understanding between the City and Developer as described in Recital C of this Agreement.

“Parties” means the City and the Developer.

“Pay-As-You-Go TDD Financing” means a method of financing pursuant to K.S.A. § 12-17,147a in which the costs of the TDD Improvements are financed without notes or bonds, and the costs are reimbursed as TDD Sales Tax is deposited in the TDD Sales Tax Fund, as provided for in Sections 3.2 through 3.5 of the Agreement.

"Private Funds" means the private equity and debt of Developer and others used to fund the costs of the Development, as referenced in Section 3.1 of the Agreement.

“Property” means ~~the portion~~certain portions of the Development owned by Developer on the Effective Date hereof, as described in Recital K hereof and ~~as shown~~outlined in blue on **Exhibit G** and legally described on **Exhibit H** attached hereto.— However, those certain green cross-hatched areas on Exhibit G are also owned by Developer at this time but such green areas are undevelopable and not intended to be governed by the terms and conditions of this Agreement.

"Second Amended TDD Petition" means the amended petition filed by Developer on August 14, 2014 requesting pay-as-you-go TDD financing and acceleration of the effective date for the TDD Sales Tax from April 1, 2017 to January 1, 2015, as referenced in Recital I hereof.

"State" means the State of Kansas.

"TDD Act" means K.S.A. 12-17,140 through 12-17,149 and amendments thereto.

"TDD Administrative Fee" means the administrative fees to be paid to the City as set forth in Section 8.1 of this Agreement.

"TDD Collection Period" means the period that commences on the date that the TDD Sales Tax is imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TDD Financing, or (b) regardless of whether the Developer has been fully reimbursed for all Eligible Expenses, that date which is twenty two (22) years from the date that the TDD Sales Tax is first imposed.

"TDD Improvements" means, collectively, the Completed TDD Improvements and the Future TDD Improvements.

"TDD Improvement Costs" means the costs of the TDD Improvements.

"TDD Petition" means the original petition to create the Highlands Village TDD, filed on March 11, 2008, attached hereto as **Exhibit B** and referenced in Recital E hereof.

"TDD Resolution" means that certain Resolution No. 3675 which approved the creation of the Highlands Village TDD on May 12, 2008, as referenced in Recital F hereof.

"TDD Sales Tax" means those revenues received from the imposition of a TDD sales tax in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers' Sales Tax Act (K.S.A. 79-3601 et seq.) within the District, as set forth in Section 3.2 hereof.

"TDD Sales Tax Fund" means the separate fund established by the City for deposit of the TDD Sales Tax received from the State collected within the Highlands Village TDD, and that is used to finance the TDD Improvements pursuant to the TDD Act, as set forth in Section 3.3. hereof.

"Term" of this Agreement means that period of time which shall commence on the Effective Date and shall expire upon that date which is the earlier of (a) the last day of the TDD Collection Period, or (b) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go TDD Financing, as set forth in Section 5.1 of this Agreement.

EXHIBITS

- Exhibit A-1 Completed TDD Improvements – General Description
- Exhibit A-2 Future TDD Improvements – General Description
- Exhibit B TDD Petition
- Exhibit C First Amended TDD Petition
- Exhibit D The District - Legal Description
- Exhibit E Map of the District Exhibit
- Exhibit F-1 TDD Resolution No. 3675
- Exhibit F-2 Resolution No. 3907 to Delay TDD Sales Tax Effective Date
- Exhibit F-3 Pay/Go TDD Resolution No. 3675, A
- Exhibit F-4 Resolution No. 4077 to Accelerate TDD Sales Tax Effective Date
- Exhibit G The Property – Map
- Exhibit H The Property – Legal Description
- Exhibit I Uses Not Eligible for TDD
- Exhibit J Form of Certification of Expenditure

EXHIBIT A-1

COMPLETED TDD IMPROVEMENTS – GENERAL DESCRIPTION

Transportation Improvements as set forth on the approved preliminary plan or otherwise approved by the City including:

- Construction of 107th Street Between Nall and Roe, including multiple bridges/culverts
- Nall Avenue Improvements
- Indian Creek Parkway Improvements
- Roe Avenue Improvements
- Construction of the internal drive connecting Freddy's Frozen Custard and Steakburgers to Indian Creek Parkway, which drive is legally described as follows: All of Tract A, Highlands Village Commercial, Second Plat, a platted subdivision of land in the City of Overland Park, Johnson County, Kansas, containing 0.4188 acres of platted land

Traffic Signals as set forth on the approved preliminary plan or otherwise approved by the City, including:

- Roe and Indian Creek Parkway Intersection
- Nall and 107th Street Intersection

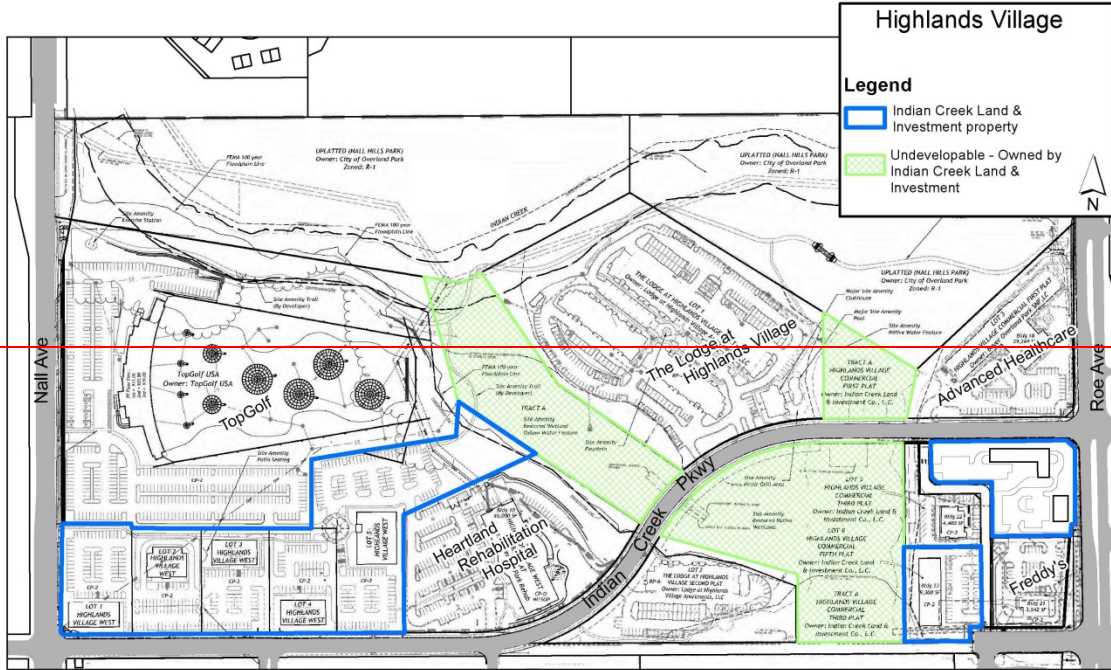
Utility Work and Relocation, including:

- Sanitary Sewer
- Water One
- Kansas Gas
- KCPL
- Cable Television

Other

- Public areas, pedestrian walkways and plazas and related improvements
- Roundabout and related traffic improvements on streets or drives
- Bike and Hike Trail improvements and amenities
- Development costs, design and engineering fees, legal fees and permit fees, as permitted by the Act and relating to the above improvements
- Excavation, fill, grading and other site work and improvements relating to the above improvements

EXHIBIT G THE PROPERTY - MAP



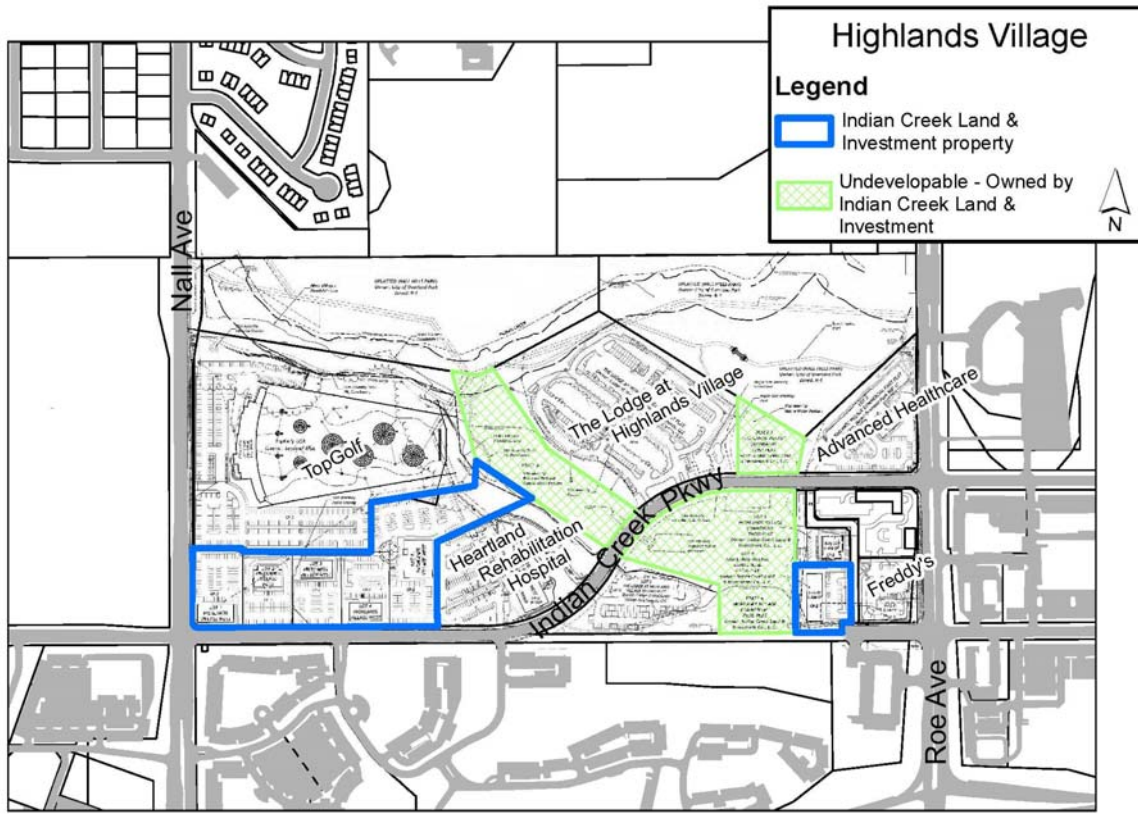


EXHIBIT I

USES NOT ELIGIBLE FOR TDD

Pursuant to Section 3.7, the parties hereby agree that Developer shall not be entitled to any Pay-As-You-Go TDD Financing in connection with Future TDD Improvements for or related to any of the following uses:

1. 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.
2. A gas station or car wash.
3. A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.
4. Any pawn shop or flea market.
5. Any store selling discounted tobacco products or tobacco-smoking paraphernalia, including without limitation, smokeless cigarettes, electronic and vapor smoking devices.
6. Pay-day or title loan facilities.
7. Any dumping, disposing, incineration or reduction of garbage; provided, however, this shall not be applicable to garbage compactors located near the rear of any building within the District.
8. Any facility for fire sales, bankruptcy sales (unless pursuant to a court order) or auction house operation.
9. Any central laundry, or laundromat.
10. Any automobile, truck, trailer or recreational vehicle dealership or other retail facility with outside sales, leasing, or displays of cars, trucks, trailers or RVs.
11. Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles.
12. Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; except that this provision shall not 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.

13. Any seasonal tax preparation facilities.
14. Any precious metals facilities.

EXHIBIT J

FORM OF CERTIFICATION OF EXPENDITURE

**CERTIFICATION OF EXPENDITURES
HIGHLANDS VILLAGE DEVELOPMENT PROJECT**

Date: _____

Certification # _____

Governing Body of the
City of Overland Park, Kansas

In accordance with the Development Agreement dated _____, 2015 (the "Agreement"), between the City of Overland Park, Kansas (the "City"), and Indian Creek Land & Investment Co., L.P. (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer for the cost of financing the TDD Improvements, as follows:

1. To the best of my knowledge, all amounts are expenses for TDD Improvements that are reimbursable to the Developer pursuant to the Agreement.
2. All amounts have been advanced by the Developer for TDD Improvement Costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$_____ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes _____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

Approved:

By: _____

Its _____

City's Representative



EXHIBIT A (TO EXHIBIT J)
TO CERTIFICATION OF EXPENDITURES
OF HIGHLANDS VILLAGE DEVELOPMENT PROJECT

PAGE _____ OF _____

Date: _____

Certification # _____

Amount of Expense

DESCRIPTION OF EXPENSE (ATTACH ADDITIONAL
SUPPORTING DOCUMENTATION)

| | |
|--------------------|--------------|
| 1. | \$ _____ |
| 2. | \$ _____ |
| 3. | \$ _____ |
| 4. | \$ _____ |
| TOTAL EXPENSES | \$ _____ |

Initials of Developer