



ADMINISTRATION

City Council Meeting: Dec. 21, 2015

Consider approval of a Resolution for the Development Agreement for the Meadowbrook Redevelopment District

RECOMMENDATION:

Approval of Resolution 2015-07 – Development Agreement between the City of Prairie Village and MB-18, LLC Relating to the Park and Village Project Area Project Plan for the Meadowbrook Redevelopment District

BACKGROUND:

The City of Prairie Village, Johnson County, Johnson County Park & Recreation District (JCPRD), JoCo Wastewater and VanTrust Real Estate LLC, have been working together to redevelop the former Meadowbrook Country Club. As currently proposed, the Meadowbrook redevelopment project would establish an approximately 80 acre public park and a mixed-use development. The Meadowbrook redevelopment project will use TIF funds from within the Park and Village project area to finance the park acquisition, park improvements and other public infrastructure items.

The Meadowbrook redevelopment project will use TIF funds from within the Park and Village project area to finance the park acquisition, park improvements and other public infrastructure items. Currently, the financing plans for the Meadowbrook project include TIF bond financing for 20 years or less. All property taxes which the owner is currently required to pay will continue.

In anticipation of a developer agreement, Mayor Wassmer appointed a city work group to discuss, facilitate discussion and negotiate the agreement. The team comprised of Mayor Wassmer, Councilmember Ted Odell, Councilmember Dan Runion, Quinn Bennion, Wes Jordan, Katie Logan - City Attorney, Gary Anderson - Bond Counsel and Jeff White - financial advisor.

Below is an outline of the major points of the Development Agreement between the City of Prairie Village and MB-18, LLC. Also, please note Exhibits A – J which include items such as the legal description, project map, and project schedule:

Recitals

- Definitions – Page 2-8

Acquisition of the Park Site

- Developer obligation on the sale of the park property – Page 9
- Parties obligations to close park site purchase and sale including necessary agreements and approvals from JCPRD, Johnson Count Wastewater, and the City of Prairie Village – Page 11-12

Development and Use of Project

- Developer obligations including the net worth requirements, private site improvement work such as required permits, grading, sanitary sewer and other utilities, and final inspections – Page 13
- Developer obligations regarding vertical improvements – Page 14-15

- Park Project Lakes – The developer and JCPRD may enter into a separate agreement in order to use the same contractor on the construction of the lake improvements – Page 15
- Project Schedule – Page 16

Project Financing

- General Obligation TIF Bonds – Page 16
- Special Obligation TIF Bonds – Page 17
- General provisions relating to the TIF bonds and key terms – Page 18-19
- Meadowbrook TIF Fund Disbursements including the City's administration fee, general obligation bond payments, special obligation bond payments, and surplus funds to cover shortfalls – Page 19-21
- Funding priority waterfall which establishes the order in which costs will be funded including First, Second, and Third Priority Items – Page 22-23
- Construction Fund Priority Waterfall including SMAC funds, GO Bonds, SO Bonds, and IRB Sales Tax Sales Tax Exemption – Page 23-24

Closing

- Closing conditions must be met with February 2016 as the currently anticipated closing date – Page 24

Assignment and Transfer

- Obligations, duties, and rights may not be assigned to another entity without prior approval of the Governing Body of the City in its reasonable discretion – Page 24-25
- Sale and Lease of the townhome sites, single-family sites, apartment site, hotel site, and senior living site – Page 25-27

General Covenants

- Indemnification of the City – Page 28
- Insurance – Page 29-31

Unit Reduction Allocation – Page 31-33

Default and Remedies

- Defining when the developer shall be in default – Page 33-34
- Rights and Remedies of the City – page 34-35

Miscellaneous

- Waiver of Breach, Force Majeure, Representations and Warranties of the Developer and City, and Notice Requirements – Page 35-39

The development agreement was drafted and coordinated by City Attorney Katie Logan with Lathrop & Gage.

ATTACHMENTS:

- Resolution 2015-07
- Development Agreement between the City of Prairie Village and MB-18, LLC with attachments

PREPARED BY:

Nolan Sunderman & Quinn Bennion

Date: Dec. 18th, 2015

RESOLUTION NO. R 2015-07

A RESOLUTION AUTHORIZING THE CITY OF PRAIRIE VILLAGE, KANSAS TO ENTER INTO A DEVELOPMENT AGREEMENT RELATING TO THE PARK AND VILLAGE PROJECT AREA PROJECT PLAN FOR THE MEADOWBROOK REDEVELOPMENT DISTRICT; PRESCRIBING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH AGREEMENT.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:

Section 1. Authorization of Agreement. The Governing Body of the City hereby approves and authorizes the execution of the Development Agreement dated December 21, 2015 between the City of Prairie Village, Kansas and MB-18, LLC relating to the Park and Village Project Area Project Plan for the Meadowbrook Redevelopment District (the "Development Agreement") in the form presented for review prior to adoption of this Resolution (a copy of which shall be filed in the records of the City).

Section 2. Execution of Agreement. The Mayor of the City is hereby authorized and directed to execute the Development Agreement with any technical corrections thereto as the Mayor may approve, which approval shall be evidenced by her execution thereof. The City Clerk of the City is hereby authorized and directed to attest the execution of the Development Agreement under the City's official seal.

Section 3. Effective Date. This Resolution shall take effect and be in force from and after its adoption.

THIS RESOLUTION IS PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, this 21st day of December, 2015.

Laura Wassmer, Mayor

ATTEST:

By _____
Joyce Hagen Mundy, City Clerk

DEVELOPMENT AGREEMENT
DATED DECEMBER 21, 2015
BETWEEN THE
CITY OF PRAIRIE VILLAGE, KANSAS,
AND
MB-18, LLC
RELATING TO THE
PARK AND VILLAGE PROJECT AREA PROJECT PLAN
FOR THE
MEADOWBROOK REDEVELOPMENT DISTRICT

LIST OF EXHIBITS

Exhibit A	District and Project Area Legal Description
Exhibit B	District and Project Area Map
Exhibit C	Preliminary Park Project Budget
Exhibit D	Park Site Gift Agreement
Exhibit E	Preliminary Plat
Exhibit F	Project Schedule
Exhibit G	Special Warranty Deed
Exhibit H	Certificate of Substantial Completion
Exhibit I	Certificate of Planned Neighborhood Units
Exhibit J	Unit Reduction Reallocation Examples

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), is dated December 21, 2015 by and between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **MB-18, LLC**, a Kansas limited liability company (the “**Developer**”).

RECITALS

A. On September 8, 2015, the Governing Body of the City (the “**Governing Body**”) approved Ordinance No. 2337, which established a redevelopment district pursuant to K.S.A. § 12-1770 *et seq.*, as amended (the “**TIF Act**”), known as the Meadowbrook Redevelopment District (as amended, the “**District**”), which is located within the City generally bounded on the north by Somerset Drive, on the east by Roe Avenue, on the south by 95th Street and on the west by Nall Avenue, as more specifically described therein. A legal description of the boundaries of the District is set forth on Exhibit A attached hereto. A map showing the location of the District is attached hereto as Exhibit B.

B. The City has prepared a redevelopment project plan for the area within the District which is the location of the former Meadowbrook Country Club (the “**Park and Village Project Area**”), dated October 9, 2015 (the “**Project Plan**”), which includes, but is not limited to, the acquisition and use of 80 to 90 acres of the Park and Village Project Area for a public park, and certain public improvements related to the public park, all in conjunction with development of a senior living facility, a luxury apartment facility, a hotel facility, townhomes and single family residences by Developer and its permitted assigns within the Park and Village Project Area (collectively, the “**Project**”). The location of the Park and Village Project Area is shown on Exhibit B. A legal description of the boundaries of the Park and Village Project Area is set forth on Exhibit A attached hereto.

C. On October 12, 2015, the Prairie Village Planning Commission reviewed the proposed Project Plan and adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City.

D. Pursuant to the requirements of the TIF Act and Resolution No. 2015-04, adopted October 12, 2015, the Governing Body set a public hearing to consider the adoption of the Project Plan on November 16, 2015 at 7:00 p.m. or as soon thereafter as the matter could be heard, at the City Council Chambers in City Hall, 7700 Mission Road, Prairie Village, Kansas and notice of such public hearing was provided as required by the TIF Act.

E. On November 16, 2015, the public hearing was opened and continued to December 7, 2017, and on December 7, 2015 public comment was received by the Governing Body and the public hearing was closed.

F. On December 21, 2015, the Governing Body by a vote of at least two-thirds of its members approved Ordinance No. 2343, which approved the Project Plan and Resolution 2015-07 approving this Agreement.

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

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“Apartment Facility” means the proposed 280 unit luxury apartment complex with interior garage to be constructed by the Developer on the Apartment Site in accordance with the Preliminary Development Plan approved pursuant to the City planning and zoning process including such amendments to the Preliminary Development Plan as may be approved from time to time through the City approval process.

“Apartment Site” means that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the Apartment Facility.

“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 Governmental Authorities, and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the Project Plan, the TIF Act, Article 12, Section 5, of the Constitution of the State of Kansas, the Kansas Cash Basis Law (K.S.A. § 10-1100, *et. seq.*), and the Kansas Budget Law (K.S.A. § 75-2935, *et. seq.*).

“Bond Documents” shall have the meaning set forth in **Section 4.06(A)**.

“Certificate of Planned Neighborhood Units” shall have the meaning set forth in **Section 8.01**.

“Certificate of Substantial Completion” shall have the meaning set forth in **Section 3.02(D)**.

“City” means the City of Prairie Village, Kansas.

“City Park Approvals” means the regulations, permits and requirements for joint approval with JCPRD of certain matters by the City as set forth in the Park Gift Site Agreement.

“City TGT Share” means the first \$25,000 of Transient Guest Tax Revenue collected by the City in each calendar year.

“Closing” shall have the meaning set forth in **Section 5.01**.

“Closing Conditions” shall mean all of the conditions to the acquisition of the Park Site set forth in **Sections 2.02 and 2.03**.

“Closing Termination Date” shall have the meaning set forth in **Section 2.03**.

“Construction Fund” shall have the meaning set forth in **Section 4.08**.

“Developer” shall mean MB-18, LLC, a Kansas limited liability company, and its permitted successors and assigns.

“Developer Default” means any event or occurrence as defined in **Section 9.01**.

“Developer Parties” has the meaning set forth in **Section 9.01** (with each referred to individually as a **“Developer Party”**).

“Developer Vertical Private Improvements” shall mean the Apartment Facility and the Hotel Facility to be completed by Developer as set forth in **Section 3.02(C)**.

“District” shall have the meaning set forth in **Recital A**.

“Due Diligence Materials” shall have the meaning set forth in **Section 2.02(A)**.

“Effective Date” shall have the meaning set forth in **Section 10.05**.

“Endorsements” shall have the meaning set forth in **Section 2.02(G)**.

“Escrow Agreement” means an escrow agreement relating to the Special Warranty Deed and the Park Purchase Price to be in form and content approved by JCPRD, the City and the Developer.

“Exception Documents” shall have the meaning set forth in **Section 2.02(E)**.

“Final Plat” means the final plat of the Park and Village Project Area approved by the City prior to Closing.

“Force Majeure” shall have the meaning set forth in **Section 10.02**.

“Funding Priority Waterfall” shall have the meaning set forth in **Section 4.12**.

“GO Surplus Fund” shall have the meaning set forth in **Section 4.07(B)(i)(d)**.

“GO TIF Bonds” means full faith and credit tax increment bonds to be issued by the City pursuant to the TIF Act and described in **Section 4.02**.

“GO TIF Bonds Shortfall” shall have the meaning set forth in **Section 8.01**.

“Governing Body” shall have the meaning set forth in **Recital A**.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Hotel Facility” means the proposed 44 room hotel and 5,000 square foot retail and restaurant space to be constructed by the Developer on the Hotel Site in accordance with the Preliminary Development Plan approved pursuant to the City planning and zoning process including such amendments to the Preliminary Development Plan as may be approved from time to time through the City approval process.

“Hotel Site” means that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the Hotel Facility.

“Incremental Tax Revenues” means the incremental increase in real property taxes received with respect to the Park and Village Project Area, determined exclusively with reference to the Park and Village Project Area base year property taxes and in accordance with the TIF Act and the Project Plan.

“Initial Trail Work” means the initial priority construction of certain trails to be located on the Park Site described as initial priority trails in the Preliminary Park Budget, the final scope of which will be approved prior to Closing in accordance with **Section 2.03(E)**.

“Inspections” shall have the meaning set forth in **Section 2.02(C)**.

“IRB” shall have the meaning set forth in **Section 4.13**.

“IRB Sales Tax Exemption” shall have the meaning set forth in **Section 4.13**.

“JCPRD” means the Johnson County Parks and Recreation District, a body corporate and political subdivision organized and existing pursuant to the laws of the state of Kansas.

“JCPRD Owner’s Policy” shall have the meaning set forth in **Section 2.02(E)**.

“JCW” means Johnson County Wastewater, a department of Johnson County, Kansas.

“JCW Agreement” means an agreement between the Developer and JCW pursuant to which the Developer will agree to construct at no cost to JCW all on-site sewer improvements, in accordance with design and specifications approved by JCW, necessary to provide sewer service to the Park and Village Project Area and, in addition, will pay to JCW the total amount of \$3,038,869 (or such other amount as is finally determined by JCW and the Developer), which payment may be made in the following: (a) a cash payment of \$248,573 by the Developer, or, if acceptable to JCW, the principal sum of \$248,573, together with interest and costs, financed by Special Benefit District Bonds for Single Family, which shall have no repayment or credit risk to the City or JCPRD; (b) a cash payment of \$1,123,982; (c) a cash payment for the Developer Sewer Buy In Cash Contribution in the amount of \$764,914; and (d) Connection Fees paid for development on the Park and Village Project Area as and when due, which are estimated to be \$901,400, based on the fee schedule currently in place.

“JCW Expansion” means the creation of a sewer district and enlargement of the Consolidated Main Sewer District to include the Park and Village Project Area and sizing all facilities (onsite and off-site) in a manner which will support the Project.

“Legend” means Legend Real Estate Holdings, LLC, a Kansas limited liability company, and an entity or party having more than 50% ownership by Legend or one or more members of Legend, or an entity which is managed or controlled by Legend or one or more members of Legend.

“Meadowbrook TIF Fund” means the City fund to be created pursuant to the TIF Act and **Section 4.06(A)** hereof.

“Memorandum of Agreement” means the instrument to be recorded in the land records of Johnson County, Kansas immediately after the recording of the Special Warranty Deed from the Developer to JCPRD, describing this Agreement and the Park Site Gift Agreement.

“Monetary Liens” shall have the meaning set forth in **Section 2.02(H)**.

“Neighborhood” shall have the meaning set forth in **Section 8.01**.

“Net Transient Guest Tax Revenues” means Transient Guest Tax Revenues reduced by the City TGT Share.

“Objection Deadline” shall have the meaning set forth in **Section 2.02(H)**.

“Objection Notice” shall have the meaning set forth in **Section 2.02(H)**.

“Park and Village Project Area” shall have the meaning set forth in **Recital B**.

“Park Lakes Agreement” means the agreement between the Developer and JCPRD described in **Section 3.02(I)**.

“Park Master Plan” means the master plan adopted by JCPRD in accordance with its policies and procedures for the design, improvement, use and operation of the Park Site as a public park, which will include the Park Limited Use Provisions and the Park Special Use Permit Provision, and approved by the City and the Developer.

“Park Project” means the purchase by the City of the Park Site from the Developer and gift of the Park Site by the City to JCPRD, the construction of the Public Infrastructure Improvements on the Park Site, and the construction of certain park improvements and amenities on the Park Site, including dredging and lake improvements, trails, and community center related improvements, in accordance with the Park Master Plan, as more fully described on the “Preliminary Park Project Budget”.

“Park Project Budget” means the final budget for the Park Project approved in writing by the City, JCPRD and the Developer prior to Closing as required by **Section 2.03(E)**.

“Park Project Costs” means the costs of the Park Project and Public Infrastructure Improvements set forth in the Park Project Budget.

“Park Purchase Price” shall have the meaning set forth in **Section 2.01**.

“Park Site” means approximately eighty-two (82) acres which is that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the public park to be purchased by the City from the Developer.

“Park Site Gift Agreement” means an agreement between the City and JCPRD in substantially the form attached hereto Exhibit D.

“Park Use Restrictions” shall have the meaning set forth in the Special Warranty Deed..

“Permitted Exceptions” shall have the meaning set forth in **Section 2.02(H)**.

“Planned Neighborhood Units” shall have the meaning set forth in **Section 8.01**.

“Pond Work” means the dredging and improvements to existing ponds on the Park Site described in the Preliminary Park Budget, the final scope of which will be approved prior to Closing in accordance with **Section 2.03(E)**.

“Preference Period” means any period during which transfers of property by the Developer or a proposed assignee/transferee may be avoided by a receiver or trustee in a voluntary or involuntary proceeding involving such entity under any bankruptcy law as a result of such transfers being characterized as a preference or fraudulent transfer.

“Preliminary Development Plan” means the Preliminary Development Plan conditionally approved by City Ordinance No. 2342.

“Preliminary Park Project Budget” means the preliminary budget for the Park Project attached hereto as Exhibit C.

“Preliminary Plat” means the Preliminary Plat attached hereto as Exhibit E.

“Private Development Site” means all areas of the Park and Village Project Area, except the Park Site.

“Private Development Site Improvement Work” shall have the meaning set forth in **Section 3.02(B)**.

“Private Improvements” means the Private Development Site Improvement Work, Apartment Facility, Hotel Facility, Senior Living Facility, Single Family Homes and Townhomes.

“Project” shall have the meaning set forth in **Recital B**.

“Project Easements” means the temporary and permanent easements and grants of right of way affecting the Park Site (i) in favor of the City necessary for construction of the Public Infrastructure Improvements; (ii) in favor of the Developer necessary for construction of the Private Development Site Improvement Work; and (iii) in favor of JCW necessary for the JCW Expansion.

“Project Plan” shall have the meaning set forth in **Recital B**.

“Project Schedule” means the schedule for the Project set forth in Exhibit F attached hereto.

“Public Infrastructure Improvements” means the public infrastructure improvements to be constructed on the Park Site described in the Preliminary Park Project Budget.

“Public Infrastructure Improvements Agreement” means the agreement between the City and the Developer described in **Section 3.02(H)**.

“Qualified Buyers” means the Developer or a Related entity acceptable to City, or “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, each of which shall execute and deliver to the City and the TIF Bonds Trustee satisfactory investor letters.

“Related” means an entity or party having greater or interests constituting voting control and 50% ownership by the Developer or one or more members of the Developer or an entity which is managed or controlled by the Developer or one or more members of the Developer.

“Revenue Fund” shall have the meaning set forth in **Section 4.07(A)**.

“Senior Living Facility” means the proposed 330 unit senior living facility with underground parking to be constructed by the Senior Facility Developer on the Senior Facility Site in accordance with the Preliminary Development Plan approved pursuant to the City planning and zoning process including such amendments to the Preliminary Development Plan as may be approved from time to time through the City approval process.

“Senior Facility Developer” means Legend, or an entity approved pursuant to **Section 6.04(D)**, which will acquire the Senior Facility Site and construct, own and operate the Senior Living Facility.

“Senior Facility Site” means that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the Senior Living Facility.

“Single Family Homes” means the proposed 53 single family homes to be constructed on the Single Family Site in accordance with the Preliminary Development Plan approved pursuant to the City planning and zoning process including such amendments to the Preliminary Development Plan as may be approved from time to time through the City approval process.

“Single Family Site” means that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the Single Family Homes.

“Site Evaluation” shall have the meaning set forth in **Section 2.02(C)**.

“SMAC Grant” shall have the meaning set forth in **Section 4.14**.

“SO Surplus Fund” shall have the meaning set forth in **Section 4.07(B)(ii)(d)**.

“SO TIF Bonds” means special obligation tax increment bonds to be issued by the City pursuant to the TIF Act and described in **Section 4.03**.

“State” means the state of Kansas.

“Special Warranty Deed” means the special warranty deed from the Developer to JCPRD in substantially the form attached hereto as Exhibit G.

“Substantial Completion” shall have the meaning set forth in **Section 3.02(D)**.

“Survey” shall have the meaning set forth in **Section 2.02(F)**.

“Tangible Net Worth” means the amount by which the aggregate consolidated total assets of the Developer, or a Related entity, as determined in accordance with cash basis accounting (consistently applied), exceed the aggregate consolidated total liabilities of such entity, as determined in accordance with cash basis accounting (consistently applied), less the amount of assets recognized as intangible on such entity’s consolidated financial statements including the value of goodwill, copyrights, patents, trademarks and other such items.

“Tangible Net Worth Requirement” means at least \$10,000,000 and reduced by (i) one-third upon issuance by the City of a final Certificate of Substantial Completion for all of the Private Development Site Improvement Work, (ii) one-third upon issuance by the City of a Certificate of Substantial Completion for the Apartment Facility, and (iii) one-third upon issuance by the City of a Certificate of Substantial Completion for the Hotel Facility.

“Term” shall have the meaning set forth in **Section 10.05**.

“Termination Notice” shall have the meaning set forth in **Section 2.02(D)**.

“TIF Act” shall have the meaning set forth in **Recital A**.

“TIF Bonds” means collectively the GO TIF Bonds and the SO TIF Bonds.

“TIF Bonds Proceeds” means the proceeds from the TIF Bonds.

“TIF Bonds Trustee” means the trustee designated in the Bond Documents governing the issuance of the TIF Bonds.

“Title Commitment” shall have the meaning set forth in **Section 2.02(E)**.

“Title Objections” shall have the meaning set forth in **Section 2.02(H)**.

“Townhomes” means the proposed 70 townhomes to be constructed on the Townhomes Site in accordance with the Preliminary Development Plan approved pursuant to the City planning and zoning process including such amendments to the Preliminary Development Plan as may be approved from time to time through the City approval process.

“Townhomes Developer” means the entity or entities which will construct, own and market for sale the Townhomes.

“Townhomes Site” means that portion of the Park and Village Project Area depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the Townhomes.

“Transient Guest Tax” or **“TGT”** means the transient guest tax imposed by the City.

“Transient Guest Tax Revenues” means 100% of the transient guest tax revenues received by the City that are generated by the Project.

“Unit Reduction Reallocation” shall have the meaning set forth in **Section 8.01**.

“1954 Agreement” means that certain agreement relating to exclusion of the Park and Village Project Area from the Johnson County Wastewater District.

Section 1.02 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 Section 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 accounting principles.
- C. All references herein to “generally accepted 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 “Sections” and other subdivisions are to the designated 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 Section or other subdivision.
- F. The Section headings herein are for convenience only and shall not affect the

construction hereof.

ARTICLE II

ACQUISITION OF THE PARK SITE

Section 2.01 Developer Obligation. In order to make available additional funds for park improvements that will benefit the public, the Developer has agreed to sell the Park Site for less than the appraised fair market value. As such, the Developer agrees to sell the Park Site to the City for a purchase price of One and 64/100 Dollars (\$1.64) per square foot based on the actual square feet of usable acres, excluding rights of ways located on the Park Site as dedicated in the Final Plat, currently estimated to be the sum of \$5,872,951 based upon a current estimate of 82.21 usable acres ("**Park Purchase Price**") and at City's direction convey title to the Park Site to JCPRD by the Special Warranty Deed subject only to the Permitted Exceptions (defined below), the Project Easements, the City Park Approvals, the Park Use Restrictions and such other matters as may be approved by the City and JCPRD in their sole and absolute discretion.

Section 2.02 Park Site Due Diligence and Title Matters.

A. Upon request, Developer shall furnish to City and JCPRD, at Developer's sole cost and expense, in order to evaluate the Park Site, copies of any agreements and/or contracts, plats, covenants, plans, surveys, engineering drawings and estimates, soil and/or other property condition reports, appraisals, environmental reports and assessments, studies, notices, correspondence from governmental or regulatory agencies or bodies, title abstracts, title commitments and policies, surveys, and all other documents in Developer's possession or control which pertain to the Park Site and requested by City or JCPRD (collectively "**Due Diligence Materials**"). Developer, in its sole and absolutely discretion, may determine what Due Diligence Materials Developer chooses to obtain, and the City and JCPRD do not have the right to require that Developer obtain any new Due Diligence Materials that Developer would not otherwise obtain. Developer makes no representation or warranty as to the accuracy of the Due Diligence materials and reliance on said matters. Except for warranties contained in the Special Warranty Deed described in **Section 2.01** hereof, if City or JCPRD takes title to the Park Site it shall do so "AS IS" "WHERE IS" based on its own independent evaluation of the Park Site in all respects.

B. Developer covenants and agrees that prior to Closing, Developer will not do or permit to be done anything which will materially modify the present condition of the Park Site, including, without limitation, perform any pond dredging and improvement work and placement of dredged materials on the Park Site, without the prior written consent and approval of the City Administrator and the Director of JCPRD.

C. City and JCPRD may (i) at their respective cost, which costs may be reimbursed to the extent permitted by the TIF Act and the Funding Priority Waterfall as set forth in **Section 4.12**, perform such appraisals, inspections, surveys, soil tests, environmental inspections and assessments (including an ASTM E1527-13 Phase I Environmental Site Assessment), engineering studies and other inspections relating to the Park Site desired by such parties, in their sole and absolute discretion (collectively the "**Inspections**"), (ii) evaluate the Due Diligence Materials and the information obtained pursuant to the Inspections (the "**Site Evaluation**"), (iii) complete and approve the Park Master Plan, and (iv) obtain all applicable governmental authorizations, approvals, permits required for the operation of the Park Site as a public park.

D. If City or JCPRD notifies the other that it is not satisfied that the Park Site is suitable for a public park in accordance with the Park Master Plan or otherwise or City decides not to purchase the Park Site or JCPRD decides not to accept the gift of the Park Site from the City, City shall give Developer

written notice of termination (the "**Termination Notice**") on or before Closing. If a Termination Notice is given, this Agreement shall terminate and have no further force or effect.

E. Contemporaneously with the execution of this Agreement, the Developer shall provide to the City and JCPRD a current commitment for an Owner's Policy of Title Insurance with respect to the Park Site (the "**Title Commitment**") issued by First American Title Company or such other title company licensed in the State of Kansas as designated by JCPRD (the "**Title Company**") and (b) complete copies of all exception documents listed in the Title Commitment (the "**Exception Documents**"). The Title Commitment shall (a) describe the Park Site, (b) name JCPRD as the party to be insured thereunder, and (c) commit to insure marketable, fee simple title to the Park Site in JCPRD in the amount of the Park Purchase Price upon recording of the Special Warranty Deed, subject to the matters described in **Section 2.01**, on ALTA Owners Form (6/17/06) policy (the "**JCPRD Owner's Policy**").

F. Within thirty (30) days after the Effective Date, Developer shall deliver to City and JCPRD a survey of the Park and Village Project Area ("**Survey**"), prepared in accordance with the current Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, including the Surveyor's certificate as necessary for the issuance of the Title Commitment, prepared by Phelps Engineering, Inc., and otherwise sufficient to allow the Title Company to provide survey coverage.

G. JCPRD and City shall have the right, at any time prior to Closing, to cause the Title Company to issue such endorsements ("**Endorsements**") to the JCPRD Owner's Policy either City or JCPRD deems necessary (including, without limitation, comprehensive, survey accuracy (if applicable), zoning, access and contiguity (if applicable), at JCPRD's sole cost and expense and without obligation on the part of Developer to obtain such Endorsements; provided, however, that Developer shall make good faith efforts to cooperate with JCPRD in obtaining such Endorsements.

H. By that date which is thirty (30) days after the receipt by the City and JCPRD of the Title Commitment and Survey (the "**Objection Deadline**"), City or JCPRD may give written notice to Developer and the Title Company ("**Objection Notice**") of any matters contained in the Title Commitment or the Survey to which either objects ("**Title Objections**"). Any matters in the Title Commitment or Survey to which City or JCPRD does not timely object shall constitute "**Permitted Exceptions**" in the special warranty deed and JCPRD Owner's Policy. Any matters affecting marketability of the title to the Park Site which first arise after the effective date of the Title Commitment and before the Closing shall be deemed a Title Objection, unless City and JCPRD otherwise waive the same in writing or proceed without written objection (which action shall constitute a waiver of any such objection). Developer agrees to notify City and JCPRD promptly upon Developer obtaining actual knowledge of any Title Objection coming into existence after the effective date of the Title Commitment. Notwithstanding the foregoing, any delinquent real property taxes, mortgages, deeds of trust, judgments and mechanics liens (collectively, the "**Monetary Liens**") disclosed on the Title Commitment shall be automatically deemed Title Objections by City and JCPRD without any further notice thereof to Developer, and Developer shall cause all such Monetary Liens to be satisfied and removed from the Title Commitment on or before the Closing Date. With regard to each such Title Objection, within ten (10) days after the date of Developer's receipt of the Objection Notice (but in any event prior to the Closing Date), Developer shall (a) cure such objection to City or JCPRD's reasonable satisfaction and provide evidence of such cure to City or JCPRD or undertake to cure such objection on or before the Closing Date, or (b) notify City and JCPRD that Developer will not undertake to cure such objection. If, on or prior to Closing, Developer has not cured such Title Objections, City or JCPRD may, at City or JCPRD's option (i) waive such Title Objections and proceed to Closing (at which point such Title Objections shall be deemed to be Permitted Exceptions), or (ii) terminate this Agreement, and this Agreement shall otherwise have no further force and effect. In the event City or JCPRD waives any of the Title Objections by proceeding to Closing, Developer shall have no liability to City or JCPRD for the existence of any

such waived Title Objections or for Developer's election to not cure or failure to cure any such waived Title Objections.

Section 2.03 Parties' Obligation to Close Park Site Purchase and Sale. Upon satisfaction of the Park Site due diligence and title matters described in **Section 2.02**, and closing of the TIF Bonds, the City agrees to use a portion of the TIF Bonds Proceeds to acquire the Park Site from the Developer for the Park Purchase Price, subject to the following additional conditions:

- A. No Termination Notice shall have been given.
- B. The Developer shall have obtained zoning and approval of the Preliminary Development Plan required by City code for the Private Improvements.
- C. The Governing Body of the City and Developer have approved the Certificate of Planned Neighborhood Units.
- D. The TIF Bonds shall have been issued, sold and delivered and the proceeds thereof, after provision for costs of issuance and capitalized interest, shall have been deposited in the Construction Fund, in an amount sufficient to fund the estimated Park Project Costs; provided that the amount of proceeds shall have been approved by the City and the Developer in their sole discretion prior to issuance of the TIF Bonds.
- E. The Governing Body of the City, JCPRD and the Developer shall have approved in writing the scope of the Pond Work and the Initial Trail Work and the Park Project Budget.
- F. The JCW Agreement shall have been approved and executed by the Developer and JCW and shall be in full force and effect without any defaults.
- G. The JCW Expansion shall have been approved and executed by JCW and the Johnson County Commission, the 1954 Agreement shall have been rescinded and terminated, the Building Permit Protocol (as defined in the JCW Agreement) shall be approved, and the Sewer Benefit District (as defined in the JCW Agreement) shall have been formed.
- H. The Park Site Gift Agreement shall have been approved and executed by JCPRD, the Governing Body of the City and the Developer and shall be in full force and effect without any defaults.
- I. The Governing Body of the City, JCPRD and the Developer shall have approved, and the City, JCPRD and the Developer shall have executed, the Memorandum of Agreement.
- J. This Agreement shall be in full force and effect without any defaults.
- K. The Public Infrastructure Improvements Agreement shall have been approved and executed by the Developer and the City and shall be in full force and effect without any defaults.
- L. The Governing Body of the City shall have determined to its satisfaction that the owners' association of the Private Development Site will maintain medians located on the Public Infrastructure Improvements at the expense of such owners' association, including costs of mowing and irrigation.
- M. The Park Lakes Agreement shall have been approved and executed by JCPRD and the Developer and shall be in full force and effect without any default.

N. The Governing Body of the City, JCPRD, JCW and Developer shall have approved the Final Plat and the Project Easements.

O. JCPRD shall have completed and approved the Park Master Plan.

P. The Governing Body of the City and Developer shall have approved the Park Master Plan.

Q. The Governing Body of the City, JCPRD and the Developer shall have approved and executed the Escrow Agreement and the Special Warranty Deed.

R. The Governing Body of the City and JCPRD shall have approved any changes to the condition of the Park Site, including pond dredging and improvement work performed in accordance with **Section 2.02(B)**.

S. JCPRD shall have irrevocably committed to the City to accept the City's gift of the Park Site subject to the City Park Approvals, and the City shall be satisfied that the City Park Approvals are enforceable and are subject only to the Permitted Exceptions, the Project Easements, and the Park Use Restrictions.

T. Developer shall have provided the City with policies or certificate(s) of insurance evidencing that the Developer and the Senior Facility Developer (if the Senior Facility Developer has closed on the purchase of the Senior Facility Site) have procured all insurance required by this Agreement as set forth in **Section 7.02** hereof.

U. The City or its financial advisor shall have received evidence reasonably satisfactory to it that on the day prior to the commencement of the Preference Period, at all times during the Preference Period and at Closing, the Developer has (i) satisfied the Tangible Net Worth Requirement, and (ii) has adequate financing to complete the Private Development Site Improvement Work and the Developer Vertical Private Improvements.

Notwithstanding anything herein to the contrary, the Closing must occur on or before December 31, 2016 (the "**Closing Termination Date**"), or any party shall have the right to terminate this Agreement.

Section 2.04 Park Use Restrictions and Developer's Obligation to Sell Park Site.

A. The Developer will convey the Park Site to JCPRD subject to the Park Use Restrictions.

B. The Developer's obligation to sell the Park Site to the City and, at City's direction, to convey the Park Site to JCPRD, is subject to the satisfaction of the Closing Conditions.

Section 2.05 City Gift of Park Site to JCPRD. Subject to the satisfaction of the Closing Conditions, the City will purchase the Park Site from the Developer for the Park Purchase Price, payable from the TIF Bonds Proceeds, and gift the Park Site to JCPRD by directing the Developer to convey the Park Site to JCPRD by the Special Warranty Deed, subject to (i) the Permitted Exceptions, (ii) the Project Easements, (iii) the Park Use Restrictions, and (iv) the City Park Approvals. The Park Purchase Price and the Special Warranty Deed shall be deposited into escrow and held in escrow in accordance with the Escrow Agreement.

Section 2.06 Failure to Close. Each of the Closing Conditions is conditioned on the complete satisfaction of all other Closing Conditions. If any of the Closing Conditions fails to occur or be waived

by the parties on or before the Closing Termination Date, and any other Closing Condition has already occurred, then after the Closing Termination Date the parties shall take all respective actions required so that the subject matter of each Closing Condition is restored to its condition as of the date of the establishment of the District, and in the case of all zoning approvals, zoning classifications shall be restored to the zoning classifications as of the date of the establishment of the District.

ARTICLE III **DEVELOPMENT AND USE OF PROJECT**

Section 3.01 Scope of the Project. As more fully described therein, the Project Plan contemplates the Park Project, which consists of acquisition of the Park Site as set forth in **Article II** hereof, the construction of certain public improvements on the Park Site; and the construction of the Private Improvements on the Private Development Site.

Section 3.02 Developer Obligations.

A. Tangible Net Worth Requirement. Developer shall maintain a Tangible Net Worth of at least the Tangible Net Worth Requirement. Not more frequently than at six month intervals, Developer will provide the City's financial advisor with such information as requested by the City's financial advisor to confirm Developer's compliance with this section.

B. Private Development Site Improvement Work. The Developer agrees to perform or cause to be performed all horizontal infrastructure work on the Private Development Site necessary for completion of all vertical aspects of the Private Improvements ("**Private Development Site Improvement Work**") in accordance with the Project Schedule, which shall include, but not be limited to:

- (i) applying for and procuring all necessary permits and other approvals affecting the Private Development Site Improvement Work;
- (ii) performing all necessary clearing and rough grading work;
- (iii) providing for connections to permanent sanitary sewer service;
- (iv) performing all necessary storm water and drainage work (including off-site, if applicable);
- (v) providing, or causing to be provided, all other utility services including electric, gas and data and telecommunications services to property lines of individual parcels;
- (vi) completion of all private road and sidewalk improvements, including signs, street lights, traffic signals (if any), medians, landscaping/irrigation (except those within a pad ready lot which will be installed with vertical construction), signage as set forth in the zoning and preliminary platting and site approval requirements;
- (vii) completion of all pad sites to pad ready or rough graded condition (as the case may be according to the relevant sale contracts) and parking improvements except as to those parking improvements which will be constructed by the party that will construct the vertical improvements thereon; and
- (viii) obtaining final inspections and approvals of all of the foregoing work from all appropriate governmental authorities and utility companies and agencies.

The City acknowledges that due to construction phasing, certain of the foregoing items applicable to the Townhomes shall be completed by the Townhomes Developer at the time the Townhome Developer makes its improvements, and are excluded from the Private Development Site Improvement Work being performed by Developer. These exclusions are subject to the reasonable written approval of the City and may include sidewalk and landscaping near driveway aprons, retaining walls, certain grading improvements and “lateral” or service lines, which must be made in conjunction with vertical development or which would be disturbed by vertical development.

C. Developer Vertical Private Improvements. The Developer agrees to construct the Apartment Facility and the Hotel Facility (“**Developer Vertical Private Improvements**”) in accordance with the Project Schedule in a manner consistent with the Project Plan and this Agreement. The following provisions shall apply to the Developer Vertical Private Improvements:

- (i) The Apartment Facility shall be constructed to the following standards:

Exterior and interior finishes and amenities (including structured parking) consistent with the quality of the projects at Mission Farms and Highlands (both in the vicinity of 107th and Mission Rd) and otherwise in compliance with the City planning and zoning approvals.

- (ii) The Hotel Facility shall be constructed to the following standards:

In compliance with the planning and zoning approvals and of comparable quality and amenities to the Apartment Facility except that the Hotel Facility shall not be required to have structured parking or individual kitchens in hotel rooms.

D. Certificate of Substantial Completion. Promptly after completion of each of the Private Development Site Improvement Work, the Apartment Facility and the Hotel Facility, the Developer shall submit a Certificate of Substantial Completion to the City. In the case of the Private Development Site Improvement Work, “Substantial Completion” shall mean that the applicable area of the Private Development Site, i.e. Single Family Site, Townhomes Site, Apartment Site, Hotel Site or Senior Facility Site, are ready for construction of the facilities planned for such site. In the case of the Apartment Facility and Hotel Facility, “Substantial Completion” shall mean that the Developer shall have received from the City any completion certificates or certificates of occupancy required by the City. The Certificate of Substantial Completion shall be in substantially the form attached as Exhibit H. The City shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City’s execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to complete the Private Development Site Improvement Work and Developer Vertical Private Improvements.

E. Senior Living Facility. The Developer shall have no obligation to construct the Senior Living Facility, which shall be constructed by the Senior Facility Developer. Developer shall include in any contract for sale regarding the Senior Living Facility one or both of the following provisions:

- (i) A repurchase option in favor of the Developer if construction on the Senior Living Facility has not commenced within 24 months of the original purchase by the Senior Facility Developer and/or
- (ii) A requirement that so long as the TIF Bonds are outstanding the Senior Facility Developer (or

successors) shall enter into an agreement with the City that requires the Senior Living Facility Developer to pay by December 20th of each year starting in tax year 2019 at least \$500,000 per year in taxes or payments in lieu of taxes to be paid to the TIF Bonds Trustee for deposit into the "Revenue Fund" as herein defined and used as provided in **Section 4.07**.

F. **Townhomes.** The Developer shall have no obligation to construct the Townhomes, which shall be constructed by the Townhomes Developer as market conditions dictate.

G. **Single Family Homes.** The Developer shall have no obligation to construct the Single Family Homes, which will be constructed by or on behalf of the future occupants thereof as market conditions dictate.

H. **Public Infrastructure Improvements.** In order to take advantage of cost savings available by having one contractor perform the same aspects of the Private Development Site Improvement Work and the Public Infrastructure Improvements, the Developer and City may enter into a separate agreement (the "**Public Infrastructure Improvement Agreement**") pursuant to which Developer, on behalf of the City, and in accordance with City specifications and requirements, contracts for the construction of the Public Infrastructure Improvements on the Park Site to be performed concurrently with the Private Development Site Improvement Work and in a manner consistent with the Project Plan and this Agreement. Notwithstanding anything else herein to the contrary, the parties agree that the Developer shall act as service provider and fee construction manager only and that the City shall bear the risks of the construction of the Public Improvements including but not limited to the contract risks, contractor or subcontractor default or dispute, risks of costs overruns, and liability during and after construction. Similarly, all matters which inure to the benefit of the owner of a project under construction, including payments for contractor delays, shall solely benefit the City.

I. **Park Project Lakes.** In order to take advantage of cost savings anticipated by the parties by having single contractors perform similar aspects of the Private Development Site Improvement Work and the parts of the Park Project consisting of lake improvements, the Developer and JCPRD may enter into a separate agreement (the "**Park Lakes Agreement**") pursuant to which Developer, on behalf of JCPRD, and in accordance with JCPRD specifications and requirements, contracts for such portions of the Park Project to be performed concurrently with the Private Development Site Improvement Work and in a manner consistent with the Project Plan and this Agreement. Notwithstanding anything else herein to the contrary, the parties agree that the Developer shall act as service provider and fee construction manager only and that JCPRD shall bear the risks of the construction of the park, lake and trails improvements including but not limited to the contract risks, contractor or subcontractor default or dispute, risks of costs overruns, and liability during and after construction. Similarly, all matters which inure to the benefit of the owner of a project under construction, including payments for contractor delays, shall solely benefit JCPRD.

Section 3.03 Changes. No "substantial changes," as defined in the TIF Act, shall be made to the Project, except as may be mutually agreed upon, in writing, between the Developer and the City, it being the intent of the parties that the layout and size of particular buildings, parking facilities and private drives will likely change through the planning, zoning and marketing process. Notwithstanding such intent, any "substantial changes" shall be made only in accordance with the TIF Act.

Section 3.04 Compliance. The Project shall at all times comply with all applicable building and zoning, health, environmental and safety codes and laws and all other Applicable Laws and Requirements. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Private Development Site Improvement Work and Developer Vertical

Private Improvements. The City shall reasonably cooperate to expeditiously consider and issue all applicable requested permits in accordance with City policies and procedures.

Section 3.05 Project Schedule. The Developer shall commence construction of the Private Development Site Improvement Work, the Developer Vertical Private Improvements, and the improvements covered by the Public Infrastructure Improvement Agreement and the Park Lakes Agreement and in accordance with the Project Schedule. The Developer shall cause the foregoing portions of the Project to be completed with due diligence in accordance with the Project Schedule, subject to Force Majeure. Upon reasonable advance notice, the Developer and the City shall meet with each other to review and discuss the design and construction of their respective portions of the Project in order to enable each to monitor the status of construction and to determine that their respective portions of the Project are being performed and completed in accordance with the Project Schedule.

Section 3.06 Taxes and Assessments. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax or assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer or if applicable other owners of real property in the Apartment Site, Hotel Site and the Senior Facility Site 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 Apartment Site, Hotel Site and the Senior Facility Site.

ARTICLE IV **PROJECT FINANCING**

Section 4.01 Sources of Funding.

A. Park Project. The Park Project will be funded with (a) a portion of TIF Bonds Proceeds, and (b) the IRB Sales Tax Exemption. The TIF Bonds will be repaid from Incremental Tax Revenues, Net Transient Guest Tax Revenues, and a portion of the TIF Bonds Proceeds.

B. Private Improvements. The Private Improvements will be funded solely by the Developer or others with private debt and equity, and will not be funded with the TIF Bonds Proceeds or be reimbursed, including with any Incremental Tax Revenues, Transient Guest Tax Revenues, IRB Sales Tax Exemption or any other public funds.

Section 4.02 GO TIF Bonds. The City contemplates the issuance of GO TIF Bonds in the estimated (in the Project Plan) principal amount of \$11,365,000 to fund a portion of the Park Project Costs.

A. Conditioned upon SO TIF Bonds. The issuance of the GO TIF Bonds will be contingent upon the simultaneous issuance and sale of the SO TIF Bonds.

B. Terms and Interest Rate. Any such GO TIF Bonds shall be issued in an amount, on terms and at an interest rate or rates determined by market conditions at the time of issuance and under terms and conditions deemed acceptable by the City in its sole and absolute discretion, which shall include, but not be limited to, the Closing Conditions.

C. Public Sale. The GO TIF Bonds shall be sold at public sale by the City in accordance with State law. The City shall have sole right, power and authority to determine the amount, terms, interest rate or rates and other terms and conditions of the GO TIF Bonds, as limited by this Agreement.

D. No Bond Guaranty or Credit Enhancement. The Developer shall not be required, in any

way, to guaranty or lend its credit to secure the GO TIF Bonds.

E. Incremental Tax Revenues. Except as provided in **Section 8.01**, fifty (50%) percent of the Incremental Tax Revenues received shall be applied to the repayment of the GO TIF Bonds.

F. Transient Guest Tax Revenues. Except as provided in **Section 8.01**, fifty (50%) percent of the Net Transient Guest Tax Revenues received shall be applied to the repayment of the GO TIF Bonds.

G. Use of Surplus Revenues. Incremental Tax Revenues and Net Transient Guest Tax Revenues applied pursuant to this Section and not required to pay debt service or other costs on GO TIF Bonds in any year shall be used to redeem GO TIF Bonds as provided in the trust indenture setting forth the terms and conditions of the GO TIF Bonds.

Section 4.03 SO TIF Bonds. Concurrently with the issuance of the GO TIF Bonds, the City contemplates the issuance of SO TIF Bonds in the estimated (in the Project Plan) principal amount of \$7,940,000 to fund a portion of the Park Project Costs.

A. Terms and Interest Rate. Any such SO TIF Bonds shall be issued in an amount, on terms and at an interest rate or rates deemed acceptable by the City and Developer in their reasonable discretion, and subject to **Section 4.07**.

B. Private Placement. The SO TIF Bonds shall be purchased on a private placement basis subject to criteria required by the City consistent with this **Article IV**, by the Developer or a Related Entity. The SO TIF Bonds shall not be transferrable until the Private Development Site Improvement Work and the Developer Vertical Private Improvements have reached Substantial Completion, or if an Event of Default (as defined by the TIF Bonds Indenture) then exists with respect to the SO TIF Bonds. The SO TIF Bonds may be transferred only to Qualified Buyers who execute and deliver investor letters in the form required by the SO TIF Bond Indenture.

C. No Guaranty or Credit Enhancement. The City shall not be required, in any way, to guaranty or lend its credit to secure the SO TIF Bonds.

D. Incremental Tax Revenues. Except as provided in **Section 8.01**, fifty (50%) percent of the Incremental Tax Revenues received shall be applied to the repayment of the SO TIF Bonds.

E. Transient Guest Tax Revenues. Except as provided in **Section 8.01**, fifty (50%) percent of the Net Transient Guest Tax Revenues received shall be applied to the repayment of the SO TIF Bonds.

F. Use of Surplus Revenues. Incremental Tax Revenues and Transient Guest Tax Revenues applied pursuant to this Section and not required to pay debt service or other costs on SO TIF Bonds in any year shall be used to redeem SO TIF Bonds as provided in the trust indenture setting forth the terms and conditions of the SO TIF Bonds.

G. The Developer represents that it will receive a portion of the proceeds of the TIF Bonds in compensation for the expenditures it will incur pursuant to this Agreement, the Park Lakes Agreement and the Public Infrastructure Improvement Agreement to acquire and construct certain improvements comprising the Park Project, that all such costs will be incurred by the Developer with the expectation that they would be paid by the City and JCPRD, and that the proceeds of the TIF Bonds received by the Developer constitute full payment for those costs as required under the terms of this Agreement Park

Lakes Agreement and the Public Infrastructure Improvement Agreement. Accordingly the Developer further represents that for purposes of computing its federal income tax liability it has not and will not include any such costs and expenditures in the tax basis of any property as a common improvement or otherwise.

Section 4.04 Additional Conditions to TIF Bonds. The issuance of the TIF Bonds shall be subject to the following additional conditions:

A. Developer shall provide such documentation to the City as is required by the City and consistent with the information provided in the Project Plan to demonstrate that the Incremental Tax Revenues and Net Transient Guest Tax Revenues contemplated herein are sufficient to pay debt service on the TIF Bonds amortized through the Term of this Agreement with a coverage factor as set forth herein.

B. The terms of the TIF Bonds, including but not limited to limitations on sales and transfers of the SO TIF Bonds to Qualified Buyers, shall be acceptable to the City in its sole and absolute discretion, as limited by this Agreement.

C. The Kansas Attorney General approves the transcript of proceedings relating to the TIF Bonds as required by Applicable Laws and Requirements.

D. Bond counsel selected by the City provides to the City an opinion to the effect that the TIF Bonds have been validly issued under Kansas law and, if applicable, the interest on the TIF Bonds is exempt from Kansas and federal income taxation, subject to the standard exceptions.

Section 4.05 Discretion of the Governing Body. The Developer understands and agrees that nothing contained herein or in the Project Plan shall in any way bind the City's Governing Body to accept or reject any proposal to authorize, issue, sell or deliver the TIF Bonds, which decision shall unconditionally remain within the sole discretion of such Governing Body. Among other things, Developer hereby understands and agrees that the City shall have the right to approve the interest rate and the other terms of the TIF Bonds.

Section 4.06 General Provisions Relating to TIF Bonds. The following provisions shall apply to the TIF Bonds:

A. Meadowbrook TIF Fund; Disbursements. The City shall establish and maintain a separate fund within its treasury which will be described and defined in the indenture and other documents related to the issuance of TIF Bonds (the "**Bond Documents**") and, for purposes of this Agreement, shall be referred to as the "**Meadowbrook TIF Fund.**" All Incremental Tax Revenues and Net Transient Guest Tax Revenues shall be deposited into the Meadowbrook TIF Fund and disbursed as set forth in **Section 4.07** hereof and in the Bond Documents.

B. Costs of Issuance. The parties agree that the principal amount of the TIF Bonds actually issued shall be more than the amounts stated in the Park Project Budget to cover other costs and expenses related to the issuance of the TIF Bonds, including but not limited to costs of issuance and capitalized interest.

C. Key Terms—GO TIF Bonds

(i) The GO TIF bonds will be structured to produce capitalized interest through and including the interest payment scheduled on the date approximately three years from the date of issuance.

- (ii) The GO TIF Bonds will be structured such that, once amortization commences, projected revenues available to pay debt service in each calendar year equals approximately 110% of scheduled debt service in such year.
- (iii) Authorized denominations shall be \$5,000.
- (iv) The GO TIF Bonds shall carry at least one bond rating.
- (v) The final maturity on the GO TIF Bonds shall be the maximum permitted under State law.
- (vi) The GO TIF Bonds shall be offered via competitive sale, consistent with State law.
- (vii) The GO TIF Bonds will be subject to optional redemption not later than six (6) years from the date of their issuance.

D. Key Terms—SO TIF Bonds

- (i) The SO TIF Bonds will be structured to produce capitalized interest through and including the interest payment scheduled on the date approximately three years from the date of issuance.
- (ii) The SO TIF Bonds will be structured such that, once amortization commences, projected revenues available to pay debt service in each calendar year equals approximately 125% of scheduled debt service in such year.
- (iii) Authorized denominations shall be \$100,000 plus increments of \$5,000.
- (iv) The SO TIF Bonds shall not be rated.
- (v) The final maturity on the SO TIF Bonds shall be the maximum permitted under State law.
- (vi) Sale and transfer of the SO TIF Bonds shall be restricted to Qualified Buyers.
- (vii) The true interest cost on the SO TIF Bonds shall not exceed 6.00%.
- (viii) The SO TIF Bonds will be subject to optional redemption at par not later than six (6) years from the date of their issuance.

E. Application of Revenues Following Retirement. Once all bonds of a series (or bonds refunding such bonds) are retired, 100% of Increment Tax Revenues and Net Transient Guest Tax Revenues shall be directed to retirement of the remaining series of bonds.

Section 4.07 Meadowbrook TIF Fund Disbursements.

A. Monthly Transfers to Trustee. On the 10th day of each month, the City shall cause the balance of the Meadowbrook TIF Fund as of the last business day of the preceding month to be distributed as follows:

- (i) The City shall transfer an amount which is necessary to pay to the City \$10,000 per year, to its General Fund as a fee for administering the Project.

- (ii) The City shall transfer the balance to the TIF Bonds Trustee for deposit in a fund to be maintained by the TIF Bonds Trustee as the “**Revenue Fund**”.

B. Direction to Trustee; Use of Revenue Fund. The City shall direct the TIF Bonds Trustee to distribute moneys on deposit in the Revenue Fund each month as follows:

- (i) One-half of such moneys shall be directed to the payment of the GO TIF Bonds as necessary to satisfy each requirement in the following order:
- a. To the payment of any rebate liability then due, to the payment of rebate analysis and other post-issuance compliance costs and to the payment of trustee fees then due or coming due in such calendar year.
 - b. To interest then due or coming due in such calendar year until all such interest payments during the calendar year are satisfied.
 - c. To principal then due or coming due in such calendar year until all such principal payments during the calendar year are satisfied.
 - d. To the surplus fund associated with the GO TIF Bonds (the “GO Surplus Fund”) and used for the early redemption of such GO TIF Bonds as provided by the trust indenture.
- (ii) One-half of such moneys shall be directed to the payment of the SO TIF Bonds as necessary to satisfy each requirement in the following order:
- a. To the payment of any rebate liability then due, to the payment of rebate analysis and other post-issuance compliance costs and to the payment of trustee fees then due or coming due in such calendar year.
 - b. To interest then due or coming due in such calendar year until all such interest payments during the calendar year are satisfied.
 - c. To principal then due or coming due in such calendar year until all such principal payments during the calendar year are satisfied.
 - d. To the surplus fund associated with the SO TIF Bonds (the “SO Surplus Fund”) and used for the early redemption of such SO TIF Bonds as provided by the trust indenture.

C. Use of Surplus Funds to Cover Shortfalls. If, five days prior to any interest payment date, the TIF Bonds Trustee determines it does not have sufficient moneys within its funds and accounts to pay interest and/or principal due on the GO TIF Bonds and/or the SO TIF Bonds on such interest payment date it shall:

- (i) With respect to the GO TIF Bonds, first apply any balance then on hand in the GO Surplus Fund to principal and/or interest due and, second, make a written demand to the City to cover any remaining shortfall. The City shall satisfy such written demand from its general fund within two days of such demand but in any case no later than the interest payment date. Any City payments to cover a shortfall made pursuant to this paragraph shall be considered to be unpaid interest under the Bond Documents, reimbursed to the City at the next available opportunity.

- (ii) With respect to the SO TIF Bonds, apply any balance then on deposit in the SO Surplus Fund to principal and/or interest due.

D. Disbursements from the GO Surplus Fund and SO Surplus Fund. Except as otherwise provided herein, the TIF Bonds Trustee may make disbursements from the GO Surplus Fund and SO Surplus Fund as follows:

- (i) Without direction from the City, the TIF Bonds Trustee may use any balances in the GO Surplus Fund to make the final installment of principal or interest due on the GO TIF Bonds.
- (ii) Without direction from the City, the TIF Bonds Trustee may use any balances in the SO Surplus Fund to make the final installment of principal or interest due on the SO TIF Bonds.
- (iii) Once bonds of either series are retired (or bonds refunding such series are retired), any remaining balance in such bonds' surplus fund shall be transferred to the Revenue Fund.
- (iv) Once both the GO TIF Bonds and the SO TIF Bonds (or bonds refunding such bonds) are no longer outstanding, the City shall use any remaining moneys in the GO Surplus Fund and SO Surplus Fund to redeem TIF Bonds in a matter consistent with Resolution 2015-03 adopted by the Governing Body on October 5, 2015.

Section 4.08 Construction Fund; Use of TIF Bonds Proceeds.

A. The TIF Bonds Trustee shall maintain a fund to be known as the **"Construction Fund"** which shall have four accounts:

- (i) the GO Construction Account,
- (ii) the SO Construction Account,
- (iii) the IRB Sales Tax Construction Account, and
- (iv) the SMAC Grant Construction Account.

B. At closing on the TIF Bonds, the TIF Bonds Trustee shall deposit the net proceeds in each of the GO TIF Bonds and the SO TIF Bonds, after provision for costs of issuance and capitalized interest, into the applicable account of the Construction Fund.

C. From time to time, as the TIF Bonds Trustee receives proceeds of the IRB Sales Tax Exemption from the Developer or Senior Facility Developer, it shall deposit such sums in the IRB Sales Tax Construction Account of the Construction Fund.

D. From time to time, as the TIF Bonds Trustee receives proceeds of the SMAC Grant from the City, it shall deposit such sums in the SMAC Grant Construction Account of the Construction Fund.

E. Periodically, but not more frequently than semi-monthly, the City and JCPRD may submit requisitions for payment of Park Project Costs from the Construction Fund. Park Project Costs shall be paid in accordance with the Funding Priority Waterfall set forth in **Section 4.12**.

F. Upon the City's written certification that all Park Project Costs have been paid, the TIF Bonds Trustee shall transfer all remaining moneys within the Construction Fund to the Revenue Fund to be treated as Incremental Tax Revenues.

Section 4.09 Certificates of Expenditure for Reimbursement of Park Project Costs from Construction Fund. The parties agree as follows:

A. The City and JCPRD shall submit or cause to be submitted to the City and, as long as the Developer, or an entity Related to the Developer, is the owner of the SO TIF Bonds, the Developer, no more frequently than monthly, a Certificate of Expenditure setting forth the amount for which certification is sought and identification of the relevant Park Project Costs.

B. The Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, and such other evidence as the City and, if applicable, the Developer shall reasonably require documenting appropriate payment.

C. Upon approval of Certificates of Expenditure by the City and, if applicable, the Developer, the TIF Bonds Trustee shall be directed to disburse TIF Bonds Proceeds to reimburse the City or JCPRD, as applicable, for Park Project Costs as set forth in **Section 4.08**.

Section 4.10 Line Items. The parties acknowledge that the line items in the Park Project Budget may deviate from the estimates stated therein based on actual costs incurred.

Section 4.11 Transient Guest Taxes. The City agrees to advance for consideration in accordance with Applicable Laws and Requirements a transient guest tax in the amount of 9% and, if such transient guest tax is approved, to seek an appropriation annually from the Governing Body to direct the Net Transient Guest Tax Revenues to the Meadowbrook TIF Fund.

Section 4.12 Funding Priority Waterfall.

A. Given that the amounts of TIF Bonds Proceeds, IRB Sales Tax Exemption and SMAC Grant, as well as the actual costs of improvements which are set forth in the Park Project Budget, are estimates and subject to change, the parties agree that certain budget line items shall have priority over others to insure that higher priority items essential to the success of the Project are fully funded. Therefore the parties have established the “**Funding Priority Waterfall**” set forth below, which establishes the order in which Park Project Costs will be funded. Items at the top of the order have priority over items that are lower in the order. Such ordering may result in lower priority items receiving reduced funding (including potentially a reduction to \$0). The City and Developer agree that once all items in the Funding Priority Waterfall have been fully funded, cost savings and unused contingency dollars shall be utilized by JCPRD in accordance with the Park Master Plan, but subject to **Section 4.08(F)**. The Park Site Gift Agreement will provide that JCPRD shall only be entitled to, and in fact shall utilize, amounts in the Construction Fund in strict accordance with the Funding Priority Waterfall. The Park Site Gift Agreement will further provide that JCPRD shall be responsible for funding any costs it incurs and/or any costs required by the Park Master Plan which cannot be funded by available TIF Bonds Proceeds, IRB Sales Tax Exemption proceeds, and, if applicable, SMAC Grant proceeds.

B. The following line item priorities are established:

First Priority Line Items	Park Purchase Price and Costs Associated with the Park Site Acquisition
Second Priority Line Items	Public Infrastructure Improvements Pond Work

	Initial Trail Work
Third Priority Line Items	All other Park Project Costs

C. The parties agree that the proceeds of the Construction Fund shall be utilized according the following Funding Priority Waterfall.

1. First, from the proceeds of the SMAC Grant Construction Account (to the extent such Line Item may be paid with SMAC Grant proceeds), and
2. Second, from the proceeds of the TIF Bonds as follows:

(a) the proceeds from the GO Construction Account shall:

First be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each First Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Second be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Second Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Third, and only to the extent that First Priority Line Items and Second Priority Line Items have been completed and paid in full, be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Third Priority Line Item until each such Line Item is fully funded as necessary for completion.

(b) the proceeds from the SO Construction Account shall:

First be utilized in proportion to the initial par amount of SO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each First Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Second be utilized in proportion to the initial par amount of SO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Second Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Third, and only to the extent that First Priority Line Items and Second Priority Line Items have been completed and paid in full, be utilized in proportion to the initial par amount of SO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Third Priority Line Item until each such Line Item is fully funded as necessary for completion.

3. Third, from the proceeds of the IRB Sales Tax Construction Account.

D. Moneys available in the GO Construction Account and the SO Construction Account of the Construction Fund for Third Priority Line Items identified pursuant to this paragraph shall be deposited in the Revenue Fund by the Trustee two (2) years following the completion of the Public Infrastructure Improvements upon the Trustee's receipt of written direction by the City of such amount.

Section 4.13 IRB Sales Tax Exemption.

A. The City agrees to consider adopting resolutions of intent for the issuance of industrial revenue bonds ("**IRBs**") for purposes of obtaining a sales tax exemption on construction materials for the Developer Vertical Private Improvements, ("**IRB Sales Tax Exemption**"), subject to the standard policies and procedures of the City, plus the following additional requirements: (1) the IRBs must be purchased by Developer or other party approved by the City; and (2) no property tax exemption will be requested for property financed with the IRBs. If the IRBs are issued by the City, Developer shall pay all costs of issuance related to the IRBs.

B. Developer will report, and cause the Senior Facility Developer and other permitted assignees to report, each not less frequently than quarterly, the IRB Sales Tax Exemption to the City and will pay or cause to be paid to the TIF Bonds Trustee for deposit in the IRB Sales Tax Construction Account of the Construction Fund from time to time, but not less than quarterly, in accordance with such procedures as will be required by the City in connection with the issuance of the IRBs, amounts equal to sales tax the Developer or its permitted transferees would have paid on construction items but for the existence of the IRB Sales Tax Exemption. The documents evidencing the IRBs shall include provisions allowing the City to audit the IRB Sales Tax Exemption in order to confirm and verify amounts owed by the Developer. Non-payment pursuant to this section shall be an Event of Default.

Section 4.14 SMAC Funding. The City intends to apply for a matching grant from the Johnson County Stormwater Management Advisory Council related to stormwater management activities within the Park Site (the "**SMAC Grant**"). To the extent permitted by the SMAC Grant, the City hereby agrees to deposit the proceeds of such SMAC Grant with the TIF Bonds Trustee for deposit in the SMAC Grant Construction Account of the Construction Fund, from time to time, within 30 days of receipt. The parties hereby agree that the intent of this paragraph is to increase moneys available for the Park Project by the amount of the SMAC Grant receipts, if any.

ARTICLE V CLOSING

Section 5.01 Closing. The term "**Closing**" as used in this Agreement, shall be deemed to mean the date on which (a) all of the Closing Conditions have been met or waived, (b) the TIF Bonds are issued, sold and delivered, and (c) the City shall purchase the Park Site from the Developer and gift the Park Site to JCPRD by directing the Developer to convey the Park Site directly to JCPRD, subject to (i) the Permitted Exceptions, (ii) the Project Easements, (iii) the Park Use Restrictions and (iv) the City Park Approvals. The parties currently anticipate that the date of Closing shall be in February, 2016. It is hereby recognized, stipulated and agreed by Developer and the City that neither party shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in **Article II** have either been satisfied or waived in accordance with the applicable provisions of **Article II**. Notwithstanding anything herein to the contrary, the Closing must occur on or before the Closing Termination Date, or either party shall have the right to terminate this Agreement.

ARTICLE VI

ASSIGNMENT AND TRANSFER

Section 6.01 Assignments by Developer. Except as set forth in **Sections 6.04** and **6.06**, 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 Governing Body of the City, in its reasonable discretion. Any proposed assignee shall have qualifications, experience and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Private Development Site and/or this Agreement being transferred. Any proposed assignee, including a proposed assignee pursuant to **Section 6.04(C)** and **Section 6.04(D)** 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 Private Development Site, such obligations, conditions and restrictions to the extent that they relate to such portion).

Section 6.02 Assignment and Estoppel Agreement. In order to effect any assignment, sale, lease or transfer requiring approval under this **Article VI**, including pursuant to **Section 6.01**, the parties agree to negotiate an Assignment and Estoppel Agreement which identifies the then current performance of the parties, including any defaults, and which also delineates which rights and obligations of Developer are being retained, and which are being assigned and relieved, and estops the parties from pursuing any claim contrary thereto, it being understood that such an agreement shall include provisions releasing the Developer from obligations then being assigned and assumed in accordance with the requirements of this **Article VI**. 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 6.03 Successors and Assigns. Except as otherwise provided herein, the parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and permitted 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 City or Developer or other transferees as if such 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.

Section 6.04 Sale or Lease.

A. **Completed Structure.** Any completed building, home or structure may be freely sold, leased or otherwise transferred and conveyed by Developer or its successors, assigns, or grantees. Any such buyer, lessee, or transferee shall not be deemed to have assumed Developer's obligations solely as a result of such sale, lease, or transfer.

B. **Townhomes Site and Single Family Site.** Upon Substantial Completion of the Private Development Site Improvement Work for the applicable area of the Townhomes Site and Single Family Site, Developer may freely, without the Governing Body's consent, sell, transfer, convey, lease or otherwise dispose of all or any part of the Townhomes Site and/or the Single Family Site so long as such site is subject to deed restrictions limiting the use of said site for the purposes intended herein, including covenants requiring that structures be constructed in accordance with the planning and zoning approvals for such sites.

C. Apartment Site and Hotel Site. Upon Substantial Completion of the Private Development Site Improvement Work for the Apartment Site and Hotel Site, and before Substantial Completion of the Apartment Facility and Hotel Facility, Developer may freely without the Governing Body's consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of each the Apartment Site and Hotel Site, so long as the proposed grantee is obligated by agreement with the City to (i) build the Planned Neighborhood Units for the Apartment Facility and/or Hotel Facility required by **Section 8.01**, (ii) comply with the standards of **Section 3.02(C)** setting the qualitative standards for such facility, and (iii) use said site for the purposes intended herein, including covenants requiring that structures be constructed in accordance with the planning and zoning approvals for such sites, but only if the following conditions are satisfied:

- (i) If the proposed transfer is of the Apartment Site, the financial advisor for the City designated by the City determines administratively that the proposed grantee (a) will have equity invested in the Apartment Facility of at least 20% of the total cost of completing the Apartment Facility in a timely fashion, (b) has committed financing necessary to complete the Apartment Facility, and (c) has a reputation of integrity within the apartment industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Apartment Facility.
- (ii) If the proposed transfer is of the Hotel Site, the financial advisor for the City designated by the City determines administratively that the proposed grantee (a) will have equity invested in the Hotel Facility of at least 20% of the total cost of completing the Hotel Facility, (b) has the financing necessary to complete the Hotel Facility in a timely fashion, and (c) has a reputation of integrity within the hotel industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Hotel Facility.

Such agreement that obligates the proposed grantee to perform according to this subsection shall include provisions releasing the Developer from those obligations then being assigned and assumed in accordance with the requirements of this **Article VI**. Unless the proposed grantee of the Apartment Site (a) assumes the Developer's obligation to satisfy the Tangible Net Worth Requirement, and does satisfy the Tangible Net Worth Requirement at all times during the Preference Period and upon such assignment, and (b) assumes the obligation of Developer to pay any GO TIF Bonds Shortfall pursuant to **Section 9.02** if the Apartment Facility is not Substantially Completed, the Developer shall not be released from the obligation to satisfy the Tangible Net Worth Requirement or the obligation to pay any GO TIF Bonds Shortfall pursuant to **Section 9.02** if the Apartment Facility is not Substantially Completed. Unless the proposed grantee of the Hotel Site (a) assumes the Developer's obligation to satisfy the Tangible Net Worth Requirement, and does satisfy the Tangible Net Worth Requirement at all times during the Preference Period and upon such assignment, and (b) assumes the obligation of Developer to pay any GO TIF Bonds Shortfall pursuant to **Section 9.02** if the Hotel Facility is not Substantially Completed, the Developer shall not be released from the obligation to satisfy the Tangible Net Worth Requirement or the obligation to pay any GO TIF Bonds Shortfall pursuant to **Section 9.02** if the Hotel Facility is not Substantially Completed. If the Developer transfers the Apartment Facility or Hotel Facility after Substantial Completion of the same, then the provisions of this **Section 6.04(C)** shall not apply.

D. Senior Facility Site. Prior to the completion of the Private Development Site Improvement Work for the Senior Facility Site, the Developer may convey all, but not less than all, of the Senior Facility Site to Legend. If Legend does not acquire the Senior Facility Site, or the Developer reacquires the Senior Facility Site, Developer may freely without the Governing Body's consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of the Senior Facility Site so long

as the proposed grantee is obligated by agreement with the Developer to construct the Senior Living Facility and to use said site for the purposes intended herein, but only if the financial advisor for the City designated by the City determines administratively that the proposed grantee has demonstrated to the reasonable satisfaction of the City (a) will have equity invested in the Senior Living Facility of at least 20% of the total cost of completing the Senior Living Facility, (b) has committed financing necessary to complete the Senior Living Facility in a timely fashion, and (c) has not been the subject of a pending indictment or convicted of a felony criminal offense in any federal or state court of the United States and has a reputation of integrity within the senior living industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Senior Living Facility. Such agreement that obligates the proposed grantee to perform according to this subsection shall include provisions releasing the Developer from obligations then being assigned and assumed in accordance with the requirements of this **Article VI**.

E. Qualifications Financial Advisor. For purpose of the approvals required under this **Section 6.04**, the financial advisor designated by the City shall have the following minimum qualifications: For purpose of the approvals required under this **Section 6.04**, the financial advisor designated by the City shall have the following minimum qualifications: (a) 10 or more years of experience in public finance, corporate finance or a related field; (b) expertise evaluating companies' financial books and records; and (c) expertise in developing, managing or maintaining commercial properties, including market multifamily, retirement or continuing care facilities and hotel or motel properties. At the City's sole discretion, the financial advisor may be comprised of a single individual or firm meeting all minimum qualifications or multiple individuals or firms together having the required qualifications.

Section 6.05 Procedure for Administrative Determinations and Appeal. The Developer shall request any administrative determination required in this Article VI in writing and shall furnish or cause to be furnished to the financial advisor designated by the City Administrator all information reasonably required by such financial advisor to determine whether the applicable standards are satisfied. Any administrative determination required by this Article VI shall be made in writing within twenty one (21) days after receipt by the City's financial advisor of all information required for such determination. If the administrative determination is that the proposed grantee does not satisfy the applicable standards set forth in this Article VI, the Developer may appeal the determination to the Governing Body of the City by filing a written request with the City Clerk for review within thirty (30) days of the determination. The Governing Body will consider the appeal no later than the second regularly scheduled meeting of the Governing Body after receipt of notice of appeal.

Section 6.06 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, or (ii) any assignment by Developer of some or all of the rights and/or obligations under this Agreement to a Related entity, provided that if such assignment is proposed prior to the Substantial Completion of the Private Development Site Improvement Work and the Developer Vertical Private Improvements, any such Related entity shall have provided evidence reasonably satisfactory to the City or its financial advisors that on the day prior to the commencement of the Preference Period, at all times during the Preference Period and upon such assignment, the Related entity satisfies the Tangible Net Worth Requirement, and has and will maintain adequate financing to complete Developer's then remaining obligations under this Agreement, including any unfinished portions of the Private Development Site Improvement Work and the Developer Vertical Private Improvements. Developer hereby agrees to provide the City with written notice of any assignment permitted by this **Section 6.06** not later than ten (10) days before such assignment, as well as any permitted transfer of some or all of the Private Development Site within ten (10) days of such transfer.

Section 6.07 Restriction on Transfer. During the Term, the Developer and any transferee or assignee of the Developer may not sell or lease property within the Private Development Site to a tax-exempt organization, except that this prohibition shall not prevent either the granting of any temporary or permanent easements necessary to facilitate the construction of the Private Improvements or tax-exempt organization temporary use within the Redevelopment District in the normal course of business. This restriction shall run with the land and be binding on Developer, and its permitted successors and assigns. In the event that Developer or any transferee or assignee of Developer seeks to transfer any property in the Private Development Site to a tax-exempt organization during the Term, such transfer may only occur upon (1) the prior written approval of the City, upon the prior execution of a separate agreement between the tax-exempt organization and the City which provides for the annual payment of an amount equal to payments in lieu of taxes (PILOTS) which otherwise would have been paid in regard to such property by such tax-exempt entity for each of the years remaining in the Term, and (2) an opinion of bond counsel to the City that such agreement does not affect the tax-exempt status of the interest on the GO TIF Bonds or the SO TIF Bonds. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser, transferee or possessor thereof were originally a party to and bound by this Agreement.

Section 6.08 Developer Pay City Costs. In each case requiring City discretionary or administrative approval under this Article, the Developer shall be responsible for reimbursing the City's reasonable costs incurred in engaging advisors and counsel to review and consider such request.

ARTICLE VII

GENERAL COVENANTS

Section 7.01 Indemnification of City.

A. Developer agrees to defend, indemnify and hold the City, its employees, agents and independent contractors and consultants (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 attorney's fees, resulting from, arising out of, or in any way connected with the Developer's actions and undertaking in implementation of the Private Improvements and Developer's obligations under this Agreement, including Developer's breach of this Agreement.

B. This Section shall not apply to a default by the City hereunder, willful misconduct or gross negligence of the City or its officers, employees or agents.

C. 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.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns, owned, has or had 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.

D. 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, any one of the City Indemnified Parties shall give prompt notice

to the Developer of the occurrence of such event.

E. The rights set forth in **Section 7.01(A)** of this Agreement shall survive the termination of this Agreement, however, except for **Section 7.01(C)**, the obligations shall be assigned to and assumed by the Commercial Owner(s) (as defined in **Section 7.02**) as sales and transfers are made.

Section 7.02 Insurance. As an obligation in a recorded instrument against the relevant property, the Developer shall through such instrument require each Commercial Owner (as defined below) of the Apartment Facility, the Hotel Facility or the Senior Living Facility, to do the following:

A. As used in this Section, **“Replacement Value”** means an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than 100% of the actual respective replacement cost of the Apartment Facility, the Hotel Facility, and Senior Living Facility (each an **“Insured Private Improvement”**), including additional administrative or managerial costs that may be incurred to effect the repairs or reconstruction, but excluding costs of excavation, foundation and footings. Replacement Value shall not be less than the cost to rebuild in the same condition. If an appraisal or report is conducted, a copy of such appraisal or report shall be furnished to the City upon request.

B. Developer shall comply, or cause its tenants and permitted transferees, including the Senior Facility Developer (each a **“Commercial Owner”**), but excluding tenants that rent individual apartments in the Apartment Facility, to comply with the insurance requirements set forth in this Section unless the Developer requests approval of substitute insurance requirements, based on insurance required by one or more lenders to Developer, and the City Administrator approves such request in writing. As long as TIF Bonds are outstanding, Commercial Owners shall keep their respective Insured Private Improvements continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Insured Private Improvements. The Commercial Owners, or assigns, at their sole expense, shall carry and maintain or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for at least the following insurance with respect to their respective Insured Private Improvements (unless the requirement therefor shall be waived by the City Administrator in writing):

1. Builder’s risk insurance on a completed value form and, on and after the completion date of each structure, property insurance, in each case (a) providing coverage during the construction of the Insured Private Improvements for financial losses of the Developer or assigns relating to continuing expenses, caused by property damage during the construction of the Insured Private Improvements, (b) providing special form replacement cost coverage (including sublimits for increased costs from changes in building laws and demolition costs) covering all improvements, fixtures and equipment in the Insured Private Improvements, (c) containing an agreed amount endorsement or a waiver of all co-insurance provisions, (d) providing for no deductible in excess of \$500,000 (as increased each year by the increase in the CPI, if any, for the preceding calendar year) for all such insurance coverage, and (e) covering, without limitation, loss, including, but not limited to, the following:

- i. fire,
- ii. extended coverage perils,
- iii. vandalism and malicious mischief,
- iv. water damage,
- v. debris removal,
- vi. collapse, and

vii. equipment breakdown,

in each case on a replacement cost basis in an amount equal to the Insured Private Improvements' Replacement Value;

2. Flood insurance, if any of the Insured Private Improvements are located in an area identified as having "special flood hazards" as such term is defined pursuant to applicable federal law, initially in an amount of, and the maximum amount available through the national flood program.

C. As an obligation in a recorded instrument against the relevant property, Developer shall contractually obligate each Commercial Owner to comply with the provisions of this Section for its respective portion of the Insured Private Improvements. Developer shall enforce the provisions of this Section to the maximum extent permitted by law, and such instrument shall further provide that the City is an intended third party beneficiary of such provisions and as such, the City has a separate and independent right to enforce such provisions directly against any Commercial Owner during the term of this Agreement. Developer shall use its best efforts to enforce such contract rights. Upon written request by the City, the Developer shall execute such documents as are necessary to assign to the City all of the Developer's rights under any lease, sales contract or other contract regarding the Apartment Site, Hotel Site and Senior Facility Site with respect only to those sections of such lease, sales contract or other contract as are necessary to evidence compliance with and otherwise enforce the provisions of **Sections 7.02 and 7.03** of this Agreement.

D. The City does not represent in any way that the insurance specified herein, whether in scope, overall coverage or limits of coverage, is sufficient to protect the business or interests of the Developer.

E. Each insurance policy obtained in satisfaction of the foregoing requirements:

1. shall be by such insurer or insurers as shall be financially responsible, and shall have a rating equal to or higher than A-/FSC VII or better by Best Insurance Guide and Key Ratings or shall be acceptable to the City and the Trustee, and
2. shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved.

F. All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be provided to the City and, prior to expiration of any such policy, the Developer shall furnish the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer if the Developer provides the City with a certificate from an Insurance Consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for 30 days' prior written notice to the Developer and the City of any cancellation (other than for nonpayment of premium), and each Commercial Owner shall notify the Developer and the City of any reduction in amount or material change in coverage in its respective policies.

G. In the event the Developer shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the Developer shall promptly notify the City of such event and the City may (but shall be under no obligation to) contract for the required policies of insurance

and pay the premiums on the same; and the Developer agrees to reimburse the City or the Trustee to the extent of the amounts so advanced, with interest thereon at a rate of one and one half percent (1.5%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%) per annum. Notwithstanding the foregoing, if the City shall advance to the Trustee the amounts necessary to contract for such insurance, then the Trustee shall promptly cause such insurance to be maintained or restored.

H. All policies of insurance required by this Section shall become utilized as required by this Agreement.

I. The City may request, from time to time, such reasonable evidence as may be necessary to ensure compliance with this Section.

Section 7.03 Obligation to Restore.

A. Restoration of Insured Private Improvements by Developer. The Developer hereby agrees that if any portion of the Insured Private Improvements owned by it shall be damaged or destroyed, in whole or in part, by fire or other casualty, or taking, the Developer shall promptly restore, replace or rebuild the same, or shall promptly cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld, conditioned, or delayed. The Developer agrees that it shall include in any documents for Developer private financing a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a lender, the lender shall be obligated to restore the Insured Private Improvements in accordance with this Section. The Developer shall give prompt written notice to the City of any material damage or destruction to any of the Insured Private Improvements owned by it by fire or other casualty, but in such circumstances the Developer shall make the property safe and in compliance with all Applicable Laws and Requirements as provided herein.

B. Restoration of Insured Private Improvements by Third Parties. Except to the extent prohibited by any HUD financing of the Apartment Facility, the Developer further agrees to obligate each Commercial Owner to comply with **Section 7.03(A)** with respect to the property of such Commercial Owner by a recorded instrument against the relevant property.

ARTICLE VIII **UNIT REDUCTION REALLOCATION**

Section 8.01 Unit Reduction Reallocation.

A. The GO Bonds shall be sized based on the number of planned units (each a “Unit”) in each of the four neighborhoods (each a “Neighborhood”) consisting of the Apartment Site, Hotel Site, Single Family Site and Townhomes Site as set forth on the final development and site plans which are approved by the City at or prior to Closing (hereinafter referred to as “Planned Neighborhood Units”). At Closing, the parties will approve and execute a certificate in the form attached hereto as Exhibit I (“Certificate of Planned Neighborhood Units”) which will establish the Planned Neighborhood Units for each Neighborhood for purpose of determining if any Unit Reduction Allocation may be due under this Article. This Agreement does not obligate the Developer to construct single family homes or townhomes. If after Closing, (i) (a) the Developer fails to complete the Private Development Site Improvement Work within the completion date set forth in the Project Schedule, or (b) fails to complete the Apartment Facility or the Hotel Facility within 12 months of the completion date set forth in the Project Schedule, or (c) there is a decrease in the total number of completed Planned Neighborhood Units

within any of the four Neighborhoods by more than 10%, and (ii) the Bond Trustee determines a shortfall pursuant to **Section 4.07(C)** (“**GO TIF Bonds Shortfall**”), then that portion of the 50% of the Incremental Tax Revenues and Net Transient Guest Tax Revenues to be allocated to the repayment of the SO TIF Bonds (as set forth in **Sections 4.03(D)** and **(E)**) equal to the “**Unit Reduction Reallocation**” set forth below, shall be redirected to the GO TIF Bonds and used by the TIF Bonds Trustee to pay the GO TIF Bonds Shortfall.

B. The Unit Reduction Payment shall be calculated each year as follows:

1. The “**TIF Revenue Per Neighborhood Unit**” shall be established according to the table below:

Neighborhood	(A) Target Units	(B) Year 0 Value	(C) Year X Value	(D) Tax Levy	(E) TIF Revenue Per Neighborhood Unit
Apartment Site	280	4,103,192	$=(B)*1.010^{(Year\ X-Year\ 0)}$	\$99.138 per \$1,000 in value	$=(C)*(D)/(A)$
Hotel Site (Units)	44	1,982,211	$=(B)*1.010^{(Year\ X-Year\ 0)}$	\$99.138 per \$1,000 in value	$=(C)*(D)/(A)$
Hotel Site TGT (Units)	44	1,139,040	$=(B)*1.005^{(Year\ X-Year\ 0)}$	9 percent	$=(C)*(D)/(A)$
Hotel Site (Retail)	5,000 sf	207,638	$=(B)*1.010^{(Year\ X-Year\ 0)}$	\$99.138 per \$1,000 in value	$=(C)*(D)/(A)$
Single Family Site	53	4,910,973	$=(B)*1.010^{(Year\ X-Year\ 0)}$	\$99.138 per \$1,000 in value	$=(C)*(D)/(A)$
Townhomes Site	70	3,191,366	$=(B)*1.010^{(Year\ X-Year\ 0)}$	\$99.138 per \$1,000 in value	$=(C)*(D)/(A)$

Notes: Year 0=2016. Year X = year for which the Unit Reduction Payment is being calculated

2. The difference between the Target Units set forth above in column (A) and the Units actually constructed (the “**Actual Units**”) for each affected Neighborhood shall be multiplied by the TIF Revenue Per Neighborhood Unit set forth above in column (E).
3. The result of the calculation in subsection 2 above shall be multiplied by 50%.

4. The product of the calculation in subsection 3 shall reduce the 50% Incremental Tax Revenues available for debt service payment on the SO TIF Bonds and increase by a like amount the Incremental Tax Revenues available for debt service payments on the GO TIF Bonds, provided that such reallocation shall only be utilized if and to the extent that Incremental Tax Revenues and Net Transient Guest Tax Revenues pursuant to **Sections 4.02(E) and (F)** are insufficient to make GO TIF Bonds debt service payments for the year in question.

C. If the Unit reduction is due to the City's failure to permit through its zoning, planning, platting or regulatory authority the Planned Neighborhood Units, no Unit Reduction Reallocation will be made.

D. The Unit Reduction Reallocation shall not apply to any change in the Actual Units built in in the Senior Living Facility.

E. For the avoidance of doubt or any ambiguity on calculation of the Unit Reduction Reallocation, examples of the application of this Section are set forth on the attached Exhibit J.

Section 8.02 Unit Reduction Reallocation Trigger. The calculation of the Unit Reduction Reallocation may be triggered:

A. On or after January 1 of any year, the City may trigger the calculation of the Unit Reduction Reallocation for such year in the event that 50% of the Incremental Tax Revenues in the year next preceding the calculation would be insufficient to fully pay GO TIF Bonds debt service coming due in the year of such calculation. The City may make written certification to the TIF Bonds Trustee and the Developer of a potential shortfall and direct the TIF Bonds Trustee to redirect that portion of the 50% of Incremental Tax Revenues that would have been paid to the benefit of the SO TIF Bonds equal to the Unit Reduction Reallocation amount calculated pursuant to this **Section 8.02** (the "**Redirection Amount**") to the GO TIF Bonds Revenue Fund in the event the 50% of the Incremental Tax Revenues accruing to the benefit of the GO TIF Bonds are actually insufficient to cover scheduled debt service in such year when due.

B. At any time the TIF Bonds Trustee notifies the City of a shortfall pursuant to **Section 4.07(C)**, the City may trigger the calculation of the Unit Reduction Reallocation for such year and cause the TIF Bonds Trustee to redirect that portion of the 50% of Incremental Tax Revenues that would have been paid to the benefit of the SO TIF Bonds equal to the Redirection Amount prior to the Trustee's use of moneys in the Redemption Fund (if any). The Trustee may transfer moneys from any fund or account held for the benefit of the SO TIF Bonds to satisfy the Redirection Amount, except for the rebate fund held for the benefit of the SO TIF Bonds.

C. In the event the Trustee has insufficient moneys on deposit in the funds and accounts of the SO TIF Bonds to satisfy the Redirection Amount, the Trustee will redirect 100% of the 50% of Incremental Tax Revenues that would have been paid to the benefit of the SO TIF bonds to the benefit of the GO TIF Bonds until such Redirection Amount is satisfied.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01 Default by Developer. Developer shall be in default ("**Developer Default**") under this Agreement if:

A. Developer, or any permitted assignee of Developer, fails to perform and complete the Private Development Site Improvement Work or either of the Developer Vertical Private Improvements in accordance with the requirements of this Agreement, including scope and quality of work, and within 12 months of the completion date set forth in the Project Schedule as long as such failure is continuing. Provided, however, that a reduction of Planned Neighborhood Units (whether such reduction is more or less than a 10% reduction) within any Neighborhood shall not be a Developer Default unless the Developer fails to perform and complete one or more of the Private Development Site Improvement Work, the Apartment Facility, or the Hotel Facility. If the Private Development Site Improvement Work is completed in accordance with the Project Schedule, and the Apartment Facility and the Hotel Facility are completed within 12 months of the completion date set forth in the Project Schedule, and the failure to perform relates solely to reduced counts of Planned Neighborhood Units, then City's sole remedy regarding reduction of Planned Neighborhood Units shall be as set forth in **Article VIII**.

B. Developer fails, after reasonable opportunity to cure, to perform the obligation to restore the Insured Private Improvements it owns, as long as such failure is continuing.

C. Prior to the completion of the Private Development Site Improvement Work and Developer Vertical Private Improvements, Developer, or any permitted assignee of Developer's obligation to complete in a timely manner any portion of the Developer Vertical Private Improvements (collectively the "**Developer Parties**"), 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 sixty (60) days; any of the Developer Parties generally is not paying its debts as such debts become due; any of the Developer Parties makes an assignment for the benefit of its creditors; a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of such party and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against a Developer Party whereupon the Private Development Site, or any part thereof, or any interest therein of the Developer Parties under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this paragraph being deemed a default under the provisions of this Agreement).

D. Developer fails to keep or perform any other 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.

E. Developer materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within fifteen (15) days of notice from the City.

Section 9.02 Rights and Remedies of City. 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. In the event of a Developer Default, the City may exercise any rights and remedies available to the City at law or in equity. Without limiting the generality of the foregoing, the City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. In the event that the City institutes a suit as a result of a Developer Default under **Section 9.01(A)** or **(B)**, the City shall be entitled to, as liquidated damages, an amount limited to the amount of any GO TIF Bonds Shortfall paid by the City from its treasury on or after the date of such default, and shall not be entitled to

consequential damages. If the City is the prevailing party in an action to enforce its remedies hereunder, the City shall be entitled to 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 9.03 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 9.04 Rights and Remedies of Developer. 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. Developer shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceedings in equity. If the Developer is the prevailing party in an action to enforce its remedies hereunder, Developer shall be entitled, subject to Applicable Laws and Requirements, to reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of Developer in connection with the enforcement of such actions or remedies.

ARTICLE X

MISCELLANEOUS

Section 10.01 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.

Section 10.02 Force Majeure. In all events, build out schedules, and required deadlines, when a party hereto shall be delayed or hindered in, or prevented from, the timely performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, riots, insurrection, environmental restrictions or remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of the City to timely approve the plans and specifications when such plans and specifications are submitted by the Developer to the City in accordance with the City's written policies and procedures, war, terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

Section 10.03 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. 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 Developer's powers and have been duly authorized by all necessary action of Developer.

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.

Section 10.04 Representations and Warranties of the City.

A. Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

B. 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 ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

C. No Consents. Except as required by the Applicable Laws and Requirements, 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 the City of this Agreement. Except as required by the Applicable Laws and Requirements, 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 the City of

this Agreement or the consummation of the transactions contemplated hereby.

D. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

Section 10.05 Term. This Agreement will become effective upon the last to occur of the following events: (i) its approval by the City, (ii) approval of the Project Plan in accordance with the TIF Act, (iii) satisfaction of the conditions set forth in **Section 10.22**, and (iv) the expiration of any protest petition period under the Applicable Laws and Requirements (the “**Effective Date**”). Provided, however, should a successful protest petition be filed against the Project Plan, this Agreement shall not take effect until after approval of the Project Plan by a majority of the voters at the required election. From and after the Effective Date, this Agreement will remain in full force and effect until the completion of the Park Project and the Private Improvements and so long thereafter as any of the TIF Bonds and/or IRBs remain outstanding, but no later than the twentieth anniversary of the date of approval of the Project Plan (the “**Term**”).

Section 10.06 Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 10.07 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City and Developer.

Section 10.08 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

Section 10.09 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.

Section 10.10 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.

Section 10.11 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 10.12 Time. Time is of the essence in this Agreement.

Section 10.13 Consents and Approvals. Wherever in this Agreement it is provided that the City or Developer shall, may or must give its approval or consent, the City or Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for Developer or the City in any action concerning the other’s reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action or to seek the recovery of attorney fees or other costs in connection with such action.

Section 10.14 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be

deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City:

City of Prairie Village
ATTN: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208
Telephone: (913) 381-6464
Facsimile: (913) 381-7755

With a copy to:

Catherine P. Logan
Lathrop & Gage LLC
10851 Mastin
Suite 1000
Overland Park, KS 66210
Telephone: (913) 451-5168
Facsimile: (913) 451-0875

To the Developer:

MB-18, LLC
4900 Main Street, Suite 400
Kansas City, MO 64112

With a copy to:

F. Chase Simmons, Esq.
Polsinelli, PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
Telephone: (816) 753-1000
Facsimile: (816) 753-1536

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

Section 10.15 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.

Section 10.16 Tax Implications. The Developer acknowledges and agrees that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to 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 10.17 Survivorship. Notwithstanding the termination of this Agreement, the Developer's obligations set out in **Section 7.01** shall survive the termination of this Agreement.

Section 10.18 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 10.19 Applicable Laws and Requirements. The parties acknowledge and agree that the ability of the City to enter into and perform this Agreement is subject to the Applicable Laws and Requirements.

Section 10.20 Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, 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 all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 10.21 Run with the Land. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and shall run with the land. At Closing, the parties shall record the Memorandum of Agreement describing this Agreement and the Park Gift Site Agreement in the land records of Johnson County, Kansas.

Section 10.22 Conditions to the Effective Date of this Agreement. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, the Developer shall submit the following documents to the City:

- A. A copy of the Developer's Articles of Organization, certified by the Secretary of State of the State of Kansas;
- B. A copy of the Operating Agreement of the Developer; and
- C. Opinion of counsel to the Developer with respect to the good standing of the Developer and the due authorization and execution of this Agreement and enforceability of this Agreement against the Developer.

[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 PRAIRIE VILLAGE, KANSAS

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

DEVELOPER:

**MB-18, LLC,
a Kansas limited liability company**

By: _____

EXHIBIT A

DISTRICT AND PROJECT AREA LEGAL DESCRIPTIONS

The following property located in Johnson County, Prairie Village, Kansas:

Park and Village Project Area:

LOTS 1 THROUGH 12, INCLUSIVE, AND LOT A, EXCEPT THE SOUTH 10 FEET THEREOF, BLOCK B, MEADOWBROOK ACRES, A SUBDIVISION IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS;

AND ALL OF THE SOUTHWEST ONE-QUARTER (SW $\frac{1}{4}$) OF SECTION THIRTY-THREE (33) TOWNSHIP TWELVE (12) RANGE TWENTY-FIVE (25) IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, EXCEPT THAT PART PLATTED AS MEADOWBROOK ACRES; AND EXCEPT THE SOUTH 40 FEET THEREOF IN 95TH STREET; AND EXCEPT THE WEST 30 FEET THEREOF IN NALL AVENUE;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, JOHNSON COUNTY, KANSAS; THENCE NORTH $0^{\circ} 00' 00''$ EAST ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 700.00 FEET TO A POINT; THENCE SOUTH $83^{\circ} 50' 00''$ EAST A DISTANCE OF 1,030.00 FEET TO A POINT; THENCE SOUTH $65^{\circ} 35' 00''$ EAST, A DISTANCE OF 375.00 FEET TO A POINT; THENCE SOUTH $0^{\circ} 00' 00''$ WEST, A DISTANCE OF 429.24 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 33; THENCE SOUTH $89^{\circ} 47' 09''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 33 A DISTANCE OF 1,365.51 FEET TO THE PLACE OF BEGINNING;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: ALL THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, THENCE SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, A DISTANCE OF 676.70 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE CONTINUING SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 605 FEET; THENCE NORTH $0^{\circ} 00' 00''$ EAST, A DISTANCE OF 240 FEET; THENCE NORTH $89^{\circ} 47' 09''$ EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 490 FEET; THENCE SOUTH $25^{\circ} 38' 32''$ EAST, A DISTANCE OF 265.74 FEET TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT;

ALSO: A PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12, RANGE 25, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE AND 88.86 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33; THENCE NORTH 75° EAST, ALONG THE SOUTH LINE OF SOMERSET DRIVE, AS ESTABLISHED BY THE PLAT OF WEST RIDING, A SUBDIVISION OF LAND NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, A DISTANCE OF 454.01 FEET, TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE, SAID SOUTH LINE BEING ON A CURVE TO THE LEFT HAVING A RADIUS OF 640 FEET, A DISTANCE OF 176.13 FEET;

THENCE SOUTH 11° 43' 23" EAST, A DISTANCE OF 183.42 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 33; THENCE SOUTH 89° 26' 38" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 33, A DISTANCE OF 637.59 FEET, TO THE POINT OF BEGINNING.

Commercial Project Area:

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE N 2°06'14" W, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 700.00 FEET; THENCE S 85°56'14" E, A DISTANCE OF 1029.95 FEET; THENCE S 67°41'14" E, A DISTANCE OF 375.00 FEET; THENCE S 02°06'14" E, A DISTANCE OF 189.07 FEET; THENCE N 87°40'29" E, A DISTANCE OF 490.00 FEET; THENCE S 27°45'12" E, A DISTANCE OF 265.74 FEET; TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE S 87°40'29" W, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 1970.54 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART IN ROADS, CONTAINING 22.1018 GROSS ACRES, MORE OR LESS.

EXHIBIT B
DISTRICT AND PROJECT AREA MAP

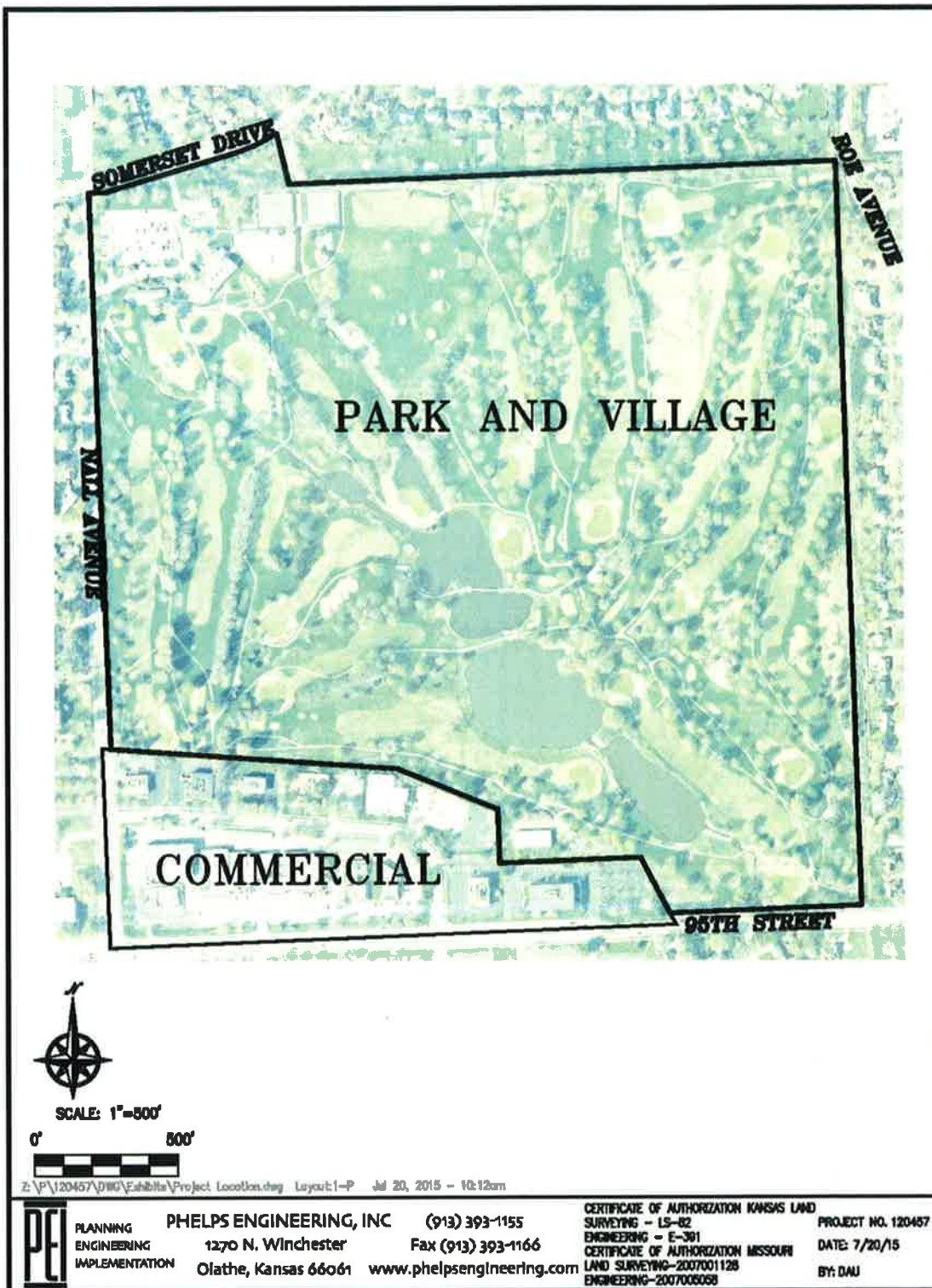


EXHIBIT C **Preliminary Park Budget**

Scope	Park	Public
Land Acquisition	5,872,951	
Pre-Construction (design, engineering, testing, surveys, mobilization)	977,066	
Initial Pond Work	1,322,244	
Initial Priority Trail Work (17,620 LF)	694,570	
Transit Improvements	35,000	
Park Improvements	1,735,248	
(other trails, monument signs, FF&E, landscape, hardscape, design, contingency)		
SUBTOTAL PARK COSTS:	10,637,079	-
Grading & Erosion Control		180,225
Streets and Paving		
Parkway Road (Public Street A)		781,457
Park Edge Connector Street (Public Street B)		399,693
Park Access Street (Public Street C)		272,886
Apartment Connections to Public Street C		-
Residential Street (Private Streets D-1)		-
Alleys		-
Storm Sewer on the Site		1,270,063
Street Lighting		276,000
Sanitary Sewer		1,047,443
Off-Site Improvements (Nail Avenue, Roe Avenue)		257,221
Utilities (By Utility Companies)		525,134
Contingency		818,017
SUBTOTAL CONSTRUCTION COSTS:		5,828,139
Fees		
Funding Agreement Reimbursement		250,000
Inspection Fee on City Public Improvements		269,946
Engineering Design & Surveys		539,891
Construction Survey Staking		89,982
Bonds (performance, maintenance, etc)		179,964
TOTAL PROJECT OPINION OF PROBABLE COSTS:	10,637,079	7,157,921
Total of Park & Public Scopes	17,795,000	
Sources (pg 17 of CC's October 2015 FA)		
GO Bonds	9,925,000	
SO Bonds	6,150,000	
Tax Exemption Contribution Est.	1,720,000	
SMAC funds	TBD	
Surplus/(Shortfall)	(0)	

EXHIBIT D

PARK SITE GIFT AGREEMENT

BETWEEN

JOHNSON COUNTY PARK AND RECREATION DISTRICT,

AND

CITY OF PRAIRIE VILLAGE, KANSAS,

RELATING TO THE

PROJECT PLAN

PARK AND VILLAGE PROJECT AREA

MEADOWBROOK DEVELOPMENT DISTRICT

LIST OF EXHIBITS

Exhibit A	Park and Village Project Area Legal Description
Exhibit B	Park and Village Project Area Map
Exhibit C	Preliminary Park Project Budget
Exhibit D	Preliminary Plat
Exhibit E	Special Warranty Deed

PARK SITE GIFT AGREEMENT

THIS PARK SITE GIFT AGREEMENT (this “**Agreement**”) is dated as of December 21, 2015 (as herein defined) by and among **JOHNSON COUNTY PARK AND RECREATION DISTRICT**, a body corporate and political subdivision organized and existing pursuant to the laws of the State of Kansas (“**JCPRD**”), and the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation organized and existing pursuant to the laws of the State of Kansas (the “**City**”). JCPRD and the City are referred to herein each as a “**Party**”, and collectively as the “**Parties**”.

RECITALS

A. On September 8, 2015, the governing body of the City (“**Governing Body**”) approved Ordinance No. 2337, which established a redevelopment district pursuant to K.S.A. § 12-1770 et seq., as amended, known as the Meadowbrook Redevelopment District (the “**District**”), which is located within the City and Johnson County, Kansas, generally bounded on the north by Somerset, on the east by Roe Avenue, on the south by 95th Street and on the west by Nall Avenue, as more specifically described therein.

B. The City has prepared a redevelopment project plan for the area within the District which is the location of the former Meadowbrook Country Club (the “**Park and Village Project Area**”), dated as of October 9, 2015 (the “**Project Plan**”), which includes, but is not limited to, the gift by the City to JCPRD of 80 to 90 acres of the Park and Village Project Area legally described on the attached Exhibit A and depicted on the attached Exhibit B (the “**Park Site**”) exclusively for a public park (the “**Park Acquisition**”), and the making of certain public improvements related to the Park Site, all in conjunction with development of a senior living facility, a luxury apartment complex, a hotel facility, townhomes and single family residences by MB-18, LLC, a Kansas limited liability company (the “**Developer**”) and its permitted assigns within privately owned areas of the Park and Village Project Area (collectively, the “**Project**”).

C. On December 16, 2015 the Board of Commissioners of JCPRD adopted a Resolution approving this Agreement.

D. On or after December 21, 2015 the Governing Body of the City will consider Ordinance No. 2343 approving the Project Plan, and a Resolution approving this Agreement and a Development Agreement between the City and Developer (“**Development Agreement**”), whereby, among other things, the City conditionally agrees to issue TIF Bonds (as defined herein) to finance certain costs of the Project, including the acquisition by JCPRD from Developer of the Park Site and certain other public improvements related to the Park Site, conditioned, in part, upon the approval by JCPRD of this Agreement.

E. Pursuant to K.S.A. §§ 19-2862 and 19-2867, JCPRD is authorized to acquire by gift, own, lease and hold real estate for and to establish, improve, finance, operate and maintain parks and playgrounds within Johnson County, Kansas.

F. With input from the City and the Developer, and concurrent with or after the approval of this Agreement, JCPRD has adopted or will adopt a master plan in accordance with its policies and procedures for the design, improvement, use and operation of the Park Site as a public park.

G. Upon the payment in escrow from proceeds of the TIF Bonds to the Developer of the Park Purchase Price (as herein defined), City is willing to direct the Developer to convey the Park Site directly to JCPRD, in escrow, and JCPRD is willing to accept title to the Park Site, subject to the

Permitted Exceptions (as defined herein), to operate and maintain the Park Site in accordance with the Park Master Plan, and to make certain improvements to the Park Site as more fully described herein, to be paid or reimbursed by a portion of the proceeds of the TIF Bonds.

H. The Parties desire to enter into this Agreement to determine the Parties' respective rights and obligations regarding the matters set forth in the above recitals.

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

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings as specifically defined herein or they shall have the following meanings:

"City Park Approvals" means the regulations, permits and requirements for joint approval with the Board of Commissioners of JCPRD of certain matters by the Governing Body of the City as set forth in **Section 2.02(B)** hereof which survive the Closing.

"Closing Conditions" shall have the meaning set forth in **Section 4.01(B)** hereof.

"Escrow Agreement" means an escrow agreement relating to the Special Warranty Deed and the Park Purchase Price to be in form and content approved by JCPRD, the City and the Developer.

"Effective Date" shall have the meaning set forth in **Section 5.03** hereof.

"Final Plat" means the final plat of the Park and Village Project Area approved by the City.

"GO TIF Bonds" means full faith and credit tax increment bonds to be issued by the City pursuant to the TIF Act and the Project Plan in the approximate amount of \$11,365,000.

"Initial Trail Work" means the initial priority construction of certain trails to be located on the Park Site described as initial priority trails in the Preliminary Park Project Budget, the final scope of which will be approved prior to Closing in accordance with **Section 4.01(B)**.

"JCW" means Johnson County Wastewater, a department of Johnson County, Kansas.

"JCW Agreement" means an agreement between the Developer and JCW pursuant to which the Developer will agree to construct at no cost to JCW all on-site sewer improvements, in accordance with design and specifications approved by JCW, necessary to provide sewer service to Park and Village Project Area and, in addition, will pay to JCW the total amount of \$3,038,869 (or such other amount as is finally determined by JCW and the Developer), which payment may be made in the following: (a) a cash payment of \$248,573 by the Developer, or, if acceptable to JCW, the principal sum of \$248,573, together with interest and costs, financed by Special Benefit District Bonds for Single Family, which shall have no repayment or credit risk to the City or JCPRD; (b) a cash payment of \$1,123,982; (c) a cash payment for the Developer Sewer Buy In Cash Contribution in the amount of \$764,914; (d) Connection Fees paid for development on the Park and Village Project Area as and when due, which are estimated to be \$901,400, based on the fee schedule currently in place.

“JCW Expansion” means the creation of a sewer district and enlargement of the Consolidated Main Sewer District to include Park and Village Project Area and sizing all facilities (onsite and off-site) in a manner which will support the Project.

“Memorandum of Agreement” means the instrument to be recorded in the land records of Johnson County, Kansas immediately after the recording of the Special Warranty Deed from the Developer to JCPRD, describing this Agreement.

“Park and Village Project Area” shall have the meaning set forth in **Recital B**.

“Park Lakes Agreement” means an agreement, if any, between Developer and JCPRD pursuant to which Developer, on behalf of JCPRD, in accordance with JCPRD specifications and requirements, contracts with the Developer for portions of the Park Project consisting of dredging and improvements to existing ponds, as more fully set forth therein.

“Park Master Plan” means the master plan adopted by JCPRD in accordance with its policies and procedures for the design, improvement, use and operation of the Park Site as a public park, and approved by the City and, with respect to the original Park Master Plan only, approved by the Developer.

“Park Project” means the acquisition from the Developer of the Park Site, the construction of the Public Infrastructure Improvements on the Park Site, and the construction of certain park improvements and amenities on the Park Site, including the Pond Work, the Initial Trail Work, the Secondary Trail Work and other improvements to the Park Site as more fully described on the “Preliminary Park Project Budget”.

“Park Project Budget” means the final budget for the Park Project approved in writing by the City, JCPRD and the Developer prior to Closing as required by **Section 4.01(B)**.

“Park Project Costs” means the costs of the Park Project set forth in the Park Project Budget.

“Park Purchase Price” means the purchase price paid by the City to the Developer for the Park Site.

“Park Site” means approximately 82 acres depicted on the Preliminary Plat, the Preliminary Development Plan and the Final Plat approved by the Governing Body prior to Closing as the site of the public park to be purchased by the City from the Developer.

“Park Use Restrictions” shall have the meaning set forth in the Special Warranty Deed.

“Permitted Exceptions” shall have the meaning set forth in **Section 2.04(H)**.

“Pond Work” means the dredging and improvements to existing ponds on the Park Site described in the Preliminary Park Project Budget, the final scope of which will be approved prior to Closing in accordance with **Section 4.01(B)**.

“Preliminary Development Plan” means the Preliminary Development Plan conditionally approved by City Ordinance No. 2342.

“Preliminary Park Project Budget” means the preliminary budget for the Park Project attached hereto as Exhibit C.

“Preliminary Plat” means the Preliminary Plat of the Park and Village Project Area attached hereto as Exhibit D.

“Private Development Site Improvement Work” means horizontal infrastructure work in the District on property other than the Park Site necessary for completion of all vertical aspects of the Private Improvements.

“Private Improvements” means certain improvements, including townhomes, single family homes, an apartment facility, a hotel facility and a senior living facility, to be constructed within the District on property other than the Park Site.

“Project Easements” means the temporary and permanent easements and grants of right of way affecting the Park Site (i) in favor of the City necessary for construction of the Public Infrastructure Improvements; (ii) in favor of the Developer necessary for construction of the Private Development Site Improvement Work; and (iii) in favor of JCW necessary for the JCW Expansion.

“Public Infrastructure Improvements” means the public infrastructure improvements to be constructed on the Park Site consisting generally of public streets and related infrastructure, as more fully described in the Preliminary Park Project Budget.

“Public Infrastructure Improvement Agreement” means an agreement between the City and Developer pursuant to which Developer, on behalf of the City, and in accordance with City specifications and requirements, contracts for the construction of the Public Infrastructure Improvements on the Park Site to be performed concurrently with the Private Development Site Improvement Work and in a manner consistent with the Project Plan and this Agreement.

“Secondary Trail Work” means construction of trails other than the Initial Trail Work to be located on the Park Site.

“Special Warranty Deed” means a special warranty deed from the Developer to JCPRD in substantially the form attached hereto as Exhibit E.

“SO TIF Bonds” means special obligation tax increment bonds to be issued by the City pursuant to the TIF Act in the approximate amount of \$7,940,000.

“TIF Bonds” means collectively the GO TIF Bonds and the SO TIF Bonds.

“TIF Bonds Proceeds” means the proceeds from the TIF Bonds.

“TIF Bonds Trustee” means the trustee designated in the Bond Documents governing the issuance of the TIF Bonds.

“1954 Agreement” means that certain agreement relating to exclusion of the Park and Village Project Area from the Johnson County Wastewater District.

ARTICLE II

PARK SITE ACQUISITION

Section 2.01 Title Subject to Certain Agreements.

A. Subject to the satisfaction of the Closing Conditions, JCPRD agrees to accept title to the Park Site subject to the Park Use Restrictions, the Permitted Exceptions, the Project Easements, and the City Park Approvals.

Section 2.02 Park Master Plan.

A. JCPRD agrees that the Park Master Plan shall designate "Meadowbrook Park" as the official name of the public park to be operated on the Park Site.

B. JCPRD agrees that its operation of the Park Site and the Park Master Plan will be subject to the following regulations, permits and requirements for joint approval of certain matters by both the Board of Commissioners of JCPRD and the Governing Body of the City:

1. JCPRD acknowledges and agrees that the use and operation of the Park Site as a public park, and the improvement of the Park Site, are subject to zoning, building codes, public safety and other laws and regulations of the City as may be in effect from time to time, including, but not limited to, current City requirements for special use permits for fireworks, racing events which affect public rights of way, alcohol permits, parade permits, and neighborhood special event permits.

2. Permits for the construction and upkeep of structures shown on the Park Master Plan shall be subject to and comply with standard City approval requirements in place from time to time. Examples include the erection or replacement of structures (conversion or replacement of former clubhouse to a JCPRD activity center, shelters, restrooms, parking lots, signs) as well as ongoing roof, plumbing, and structural repairs and/or upgrades.

3. Any changes to the Park Site not contemplated in the original Park Master Plan which are subject to City building permits, right of way permits, or drainage permits shall require, in addition to staff approval, approval by the Governing Body of the City. Examples include the construction of new buildings, parking lots, lighting structures, or roadways not shown on the original Park Master Plan.

4. Upon the termination of the Park Use Restrictions, changes to the Park Site which would incorporate those uses prohibited by the Park Use Restrictions (skate parks; permanent areas for off-leash dogs, cats, or other domesticated animals; and permanent athletic fields, goals, bleachers, sports lighting or other actions or indications of programmed organized sports or facilities except within the Community Center Activity Zone), and at all times after Closing any other major deviation from the original Parks Master Plan approved by the City, shall require joint approval of the Board of Commissioners of JCPRD and the Governing Body of the City of Prairie Village, after public hearing, review by and recommendation of the City of Prairie Village Planning Commission. The Planning Commission review procedure shall be the same as the procedure followed by the City for rezoning applications but shall not be subject to a protest petition. For purposes of this paragraph, "major deviation" shall mean any change in use or design that, on its own or cumulatively over time, results in a change in use or design (or both) of more than five percent (5%) of the total acreage of the Park Site, as compared to the uses and design described in the original Park Master Plan approved by the City.

C. City agrees that expenses related to completion of the Park Master Plan incurred by JCPRD before Closing are eligible for payment or reimbursement from the proceeds of the TIF Bonds.

Section 2.03 Improvement and Operation of Park Site

A. JCPRD will utilize the Park Master Plan to guide park improvements and, subject to the availability of funds under Section 3.03, complete or cause to be completed the Pond Work and the Initial Trail Work by a date which is not later than eighteen (18) months after completion of the Public Infrastructure Improvements, and will operate, maintain, repair, improve and provide services at the Park Site in accordance with the Park Master Plan.

B. JCPRD will open the Park Site to the public for use as a public park on a date which is not later than two (2) years after completion of the Public Infrastructure Improvements, regardless of whether all of the Pond Work and Initial Trail Work have been completed.

C. JCPRD's failure to comply with subsections (A) and (B) of this section shall constitute a failure to operate the Park Site as a public park and, at City's option, shall trigger the vesting of title in the Park Site in City as provided in the Special Warranty Deed.

D. Subject to prior reservation and availability, the City will have the right to use facilities at the Park Site for City events without charge six (6) times per year, provided that such events shall not include the exclusive use of the entire Park Site.

E. 2020, LLC is a neighboring property which owns property adjacent to the Park Site. JCPRD agrees to use good faith efforts to work with 2020, LLC to mutually approve a landscaping easement on that portion of the Park Site that abuts the 2020, LLC property.

Section 2.04 Park Site Due Diligence and Title Matters.

A. The Parties each acknowledge that Developer has agreed that either may request, at Developer's sole cost and expense, in order to evaluate the Park Site, copies of any agreements and/or contracts, plats, covenants, plans, surveys, engineering drawings and estimates, soil and/or other property condition reports, appraisals, environmental reports and assessments, studies, notices, correspondence from governmental or regulatory agencies or bodies, title abstracts, title commitments and policies, surveys, and all other documents in Developer's possession or control which pertain to the Park Site and requested by City or JCPRD (collectively "**Due Diligence Materials**"). Developer, in its sole and absolute discretion, may determine what Due Diligence Materials Developer chooses to obtain, and the City and JCPRD do not have the right to require that Developer obtain any new Due Diligence Materials that Developer would not otherwise obtain. The Parties acknowledge and agree that the Developer makes no representation or warranty as to the accuracy of the Due Diligence Materials and reliance on said matters. If City or JCPRD takes title to the Park Site it shall do so "AS IS" "WHERE IS" based on its own independent evaluation of the Park Site in all respects.

B. The Parties each acknowledge that Developer has agreed that each may (i) at its respective cost, which costs may be reimbursed to the extent permitted by the TIF Act and the Funding Priority Waterfall, perform such appraisals, inspections, surveys, soil tests, environmental inspections and assessments (including an ASTM E1527-13 Phase I Environmental Site Assessment), engineering studies and other inspections relating to the Park Site desired by such Parties, in their sole and absolute discretion, including matters relating to any activities by the Developer on the Park Site prior to Closing (collectively the "**Inspections**"), (ii) evaluate the Due Diligence Materials and the information obtained pursuant to the Inspections (the "**Site Evaluation**"), (iii) complete and approve the Park Master Plan, and (iv) obtain all applicable governmental authorizations, approvals, permits required for the operation of the Park Site as a public park.

C. Developer has agreed that prior to Closing, Developer will not do or permit to be done anything which will materially modify the present condition of the Park Site, including, without limitation, perform any pond dredging and improvement work and placement of dredged materials on the Park Site, without the prior written consent and approval of the City Administrator and the Director of JCPRD.

D. If JCPRD or City notifies the other that it is not satisfied that the Park Site is suitable for a public park in accordance with the Park Master Plan or otherwise decides not to proceed with the acquisition of the Park Site from the Developer, such party shall give the other and the Developer written notice of termination (the "**Termination Notice**") on or before Closing. If a Termination Notice is given, this Agreement shall terminate and have no further force or effect.

E. City will require Developer to deliver to City and JCPRD a current commitment for an Owner's Policy of Title Insurance with respect to the Park Site (the "**Title Commitment**") issued by First American Title Company or such other title company licensed in the State of Kansas as designated by JCPRD (the "**Title Company**") and (b) complete copies of all exception documents listed in the Title Commitment (the "**Exception Documents**"). The Title Commitment shall (a) describe the Park Site, (b) name JCPRD as the party to be insured thereunder, and (c) commit to insure marketable, fee simple title to the Park Site in JCPRD in the amount of the Park Purchase Price upon recording of the Special Warranty Deed, subject to the Permitted Exceptions, Park Use Restrictions and City Park Approvals, from the Developer to JCPRD on ALTA Owners Form (6/17/06) policy (the "**JCPRD Owner's Policy**").

F. City will require Developer to deliver to City and JCPRD a survey of the Park and Village Project Area ("**Survey**"), prepared in accordance with the current Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, including the Surveyor's certificate as necessary for the issuance of the Title Commitment, prepared by PEI, and otherwise sufficient to allow the Title Company to provide survey coverage.

G. Developer has agreed that JCPRD shall have the right, at any time prior to Closing, to cause the Title Company to issue such endorsements ("**Endorsements**") to the JCPRD Owner's Policy as it deems necessary (including, without limitation, comprehensive, survey accuracy (if applicable), zoning, access and contiguity (if applicable), at such party's sole cost and expense and without obligation on the part of Developer to obtain such Endorsements; and that Developer has agreed to use commercially reasonable efforts to cooperate with City and JCPRD in obtaining such City or JCPRD Endorsements.

H. Within (30) days after the receipt by the City and Developer of the Title Commitment and Survey (the "**Objection Deadline**"), City or JCPRD may give written notice to Developer and the Title Company ("**Objection Notice**") of any matters contained in the Title Commitment or the Survey to which either objects ("**Title Objections**"). Any matters in the Title Commitment or Survey to which City or JCPRD does not timely object shall constitute "**Permitted Exceptions**" in the special warranty deeds and applicable title policies. Any matters affecting marketability of the title to the Park Site which first arise after the effective date of the Title Commitment and before the Closing shall be deemed Title Objections, unless City and JCPRD otherwise waives the same in writing or proceeds without written objection (which action shall constitute a waiver of any such objection). Notwithstanding the foregoing, any delinquent real property taxes, mortgages, deeds of trust, judgments and mechanics liens arising out of the acts or omissions of Developer (collectively, the "**Monetary Liens**") disclosed on the Title Commitment shall be automatically deemed Title Objections by City and JCPRD without any further notice thereof to Developer, and Developer has agreed to cause all such Monetary Liens to be satisfied and removed from the Title Commitment on or before the Closing Date. If, on or prior to Closing, Developer has not cured such Title Objections, City or JCPRD may, at City or JCPRD's option (i) waive such Title Objections and proceed to Closing (at which point such Title Objections shall be deemed to be

Permitted Exceptions), or (ii) terminate this Agreement, and this Agreement shall otherwise have no further force and effect. In the event City or JCPRD waives any of the Title Objections by proceeding to Closing, Developer shall have no liability to City or JCPRD for the existence of any such waived Title Objections or for Developer's election to not cure or failure to cure any such waived Title Objections.

Section 2.05 "As-Is" Nature of Transfer

A. JCPRD acknowledges and agrees that neither City nor Developer has made, and that each City and Developer does not make and that each specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Park Site. JCPRD further acknowledges and agrees that having been given the opportunity to inspect the Park Site and the public records relating to the Park Site, JCPRD is relying solely on its own investigation of the Park Site and not on any information provided or to be provided by Developer or City. Developer and City are not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Park Site, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. JCPRD further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Park Site as provided for herein is made on an "AS IS" condition and basis with all faults.

B. JCPRD acknowledges and agrees that each Developer and City shall have no liability for, and that JCPRD releases and has no recourse against each Developer and City for any defect or deficiency of any kind whatsoever in the Park Site without regard to whether such defect or deficiency was known or discoverable by the Developer or the City.

ARTICLE III

FUNDING OF PARK ACQUISITION AND PARK IMPROVEMENTS

Section 3.01 Funding Sources.

A. The City contemplates the issuance of TIF Bonds which, if issued, the TIF Bonds Proceeds shall be used *in part* to fund the Park Purchase Price, the planning of the Park Master Plan and the construction of improvements called for in the Park Project Budget and the Park Master Plan.

B. The City may also issue industrial revenue bonds for purposes of obtaining a sales tax exemption on construction materials for an apartment facility and hotel facility, the value of such sales tax exemption to be rebated by the Developer or others each month as earned for the benefit of the Project, all as described in the Project Plan ("**IRB Sales Tax Exemption**").

C. The City represents that it has applied for a matching grant from the Johnson County Stormwater Management Advisory Council related to stormwater management activities within the Park Site (the "**SMAC Grant**"). To the extent permitted by the SMAC Grant, the City hereby agrees to deposit the proceeds of such SMAC Grant with the TIF Bonds Trustee for deposit in the SMAC Grant Construction Account of the Construction Fund, from time to time, within 30 days of receipt. The Parties hereby agree that the intent of this paragraph is to increase moneys available for the Park Project by the amount of the SMAC Grant receipts, if any.

Section 3.02 Construction Fund; Use of TIF Bonds Proceeds.

A. The TIF Bonds Trustee shall maintain a fund to be known as the "**Construction Fund**" which shall have four accounts:

- (i) the GO Construction Account,
- (ii) the SO Construction Account,
- (iii) the IRB Sales Tax Construction Account, and
- (iv) the SMAC Grant Construction Account.

B. At closing on the TIF Bonds, the TIF Bonds Trustee shall deposit the net proceeds of each the GO TIF Bonds and the SO TIF Bonds, after provision for costs of issuance and capitalized interest, into the applicable account of the Construction Fund.

C. From time to time, as the TIF Bonds Trustee receives proceeds of the IRB Sales Tax Exemption from the Developer, it shall deposit such sums in the IRB Sales Tax Construction Account on the Construction Fund.

D. From time to time, as the TIF Bonds Trustee receives proceeds of the SMAC Grant from the City, it shall deposit such sums in the SMAC Grant Construction Account of the Construction Fund.

E. Periodically, but not more frequently than monthly, the City and JCPRD may submit requisitions for payment of Park Project Costs from the Construction Fund. Park Project Costs shall be paid in accordance with the Funding Priority Waterfall set forth in **Section 3.03**.

Section 3.03 Funding Priority Waterfall.

A. Given that the amounts of TIF Bonds Proceeds, IRB Sales Tax Exemption and SMAC Grant, as well as the actual costs of improvements which are set forth in the Park Project Budget, are estimates and subject to change, the parties agree that certain budget line items shall have priority over others to insure that higher priority items essential to the success of the Project are fully funded. Therefore the parties have established the “**Funding Priority Waterfall**” set forth below, which establishes the order in which Park Project Costs will be funded. Items at the top of the order have priority over items that are lower in the order. Such ordering may result in lower priority items receiving reduced funding (including potentially a reduction to \$0). The City and JCPRD agree that once all items in the Funding Priority Waterfall have been fully funded, cost savings and unused contingency dollars shall be utilized by JCPRD in accordance with the Park Master Plan. JCPRD shall only be entitled to, and in fact shall utilize, amounts in the Construction Fund in strict accordance with the Funding Priority Waterfall. Subject to its budget requirements and availability of funds, JCPRD shall be responsible for funding any costs it incurs and/or any costs required by the Park Master Plan which cannot be funded by available TIF Bonds Proceeds, IRB Sales Tax Exemption, and, if applicable, SMAC Grant. JCPRD acknowledges that some portion of the sources of funds described in this section may not be available until the Private Improvements within the District are substantially constructed.

B. The following line item priorities are established:

First Priority Line Items	Park Purchase Price and Costs Associated with the Park Site Acquisition
Second Priority Line Items	Public Infrastructure Improvements

	Pond Work and Initial Trail Work
Third Priority Line Items	Secondary Trail Work and all other Park Project Costs

C. The parties agree that the proceeds of the Construction Fund shall be utilized according to the following Funding Priority Waterfall.

1. First, from the proceeds of the SMAC Grant Construction Account (to the extent such Line Item may be paid with SMAC Grant proceeds), and

2. Second, from the proceeds of the TIF Bonds as follows:

(a) the proceeds from the GO Construction Account shall:

First be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each First Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Second be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Second Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Third, and only to the extent that First Priority Line Items and Second Priority Line Items have been completed and paid in full, be utilized in proportion to the initial par amount of GO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Third Priority Line Item until each such Line Item is fully funded as necessary for completion.

(b) the proceeds from the SO Construction Account shall:

First be utilized in proportion to the initial par amount of SO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each First Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Second be utilized in proportion to the initial par amount of SO TIF Bonds against the initial par amount of the TIF Bonds for payment toward each Second Priority Line Item until each such Line Item is fully funded as necessary for completion even if the amount necessary for completion exceeds the estimated amount for such Line Item set forth in the Park Project Budget; thereafter available proceeds from the GO Construction Account shall

Third, and only to the extent that First Priority Line Items and Second Priority Line Items have been completed and paid in full, be utilized in proportion to the initial par amount of SO TIF Bonds

against the initial par amount of the TIF Bonds for payment toward each Third Priority Line Item until each such Line Item is fully funded as necessary for completion.

3. Third, from the proceeds of the IRB Sales Tax Construction Account.

D. Moneys available in the GO Construction Account and the SO Construction Account of the Construction Fund for Third Priority Line Items identified pursuant to this paragraph shall be deposited in the Revenue Fund by the Trustee two (2) years following the completion of the Public Infrastructure Improvements upon the Trustee's receipt of written direction by the City of such amount.

Section 3.04 Certificates of Expenditure for Payment or Reimbursement of Park Project Costs. The parties agree as follows:

A. The City and JCPRD shall submit or cause to be submitted to the City and, as long as the Developer, or an entity Related to the Developer, is the owner of the SO TIF Bonds, the Developer, no more frequently than monthly, a Certificate of Expenditure setting forth the amount for which certification is sought and identification of the relevant Park Project Costs.

B. The Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, and such other evidence as the City and, if applicable, the Developer shall reasonably require documenting appropriate payment.

C. Upon approval of Certificates of Expenditure by the City and, if applicable, the Developer, the TIF Bonds Trustees shall be directed to disburse TIF Bonds Proceeds to pay third party invoices as directed by the City or JCPRD, or to reimburse the City or JCPRD, as applicable, for Park Project Costs as set forth in **Section 3.02**.

Section 3.05 Line Items. The parties acknowledge that the line items in the Park Project Budget may deviate from the estimates stated therein based on actual costs incurred.

ARTICLE IV CLOSING

Section 4.01 Closing.

A. Date of Closing. The term "**Closing**" as used in this Agreement shall mean the date on which all of the following have occurred or are effective, or are to occur or to be effective:

1. The TIF Bonds shall have been issued;

2. The City shall have directed the TIF Bonds Trustee, to pay the Park Purchase Price in escrow to Developer and shall have gifted the Park Site to JCPRD by directing the Developer to, and Developer shall, transfer the Park Site to JCPRD in escrow by Special Warranty Deed, in accordance with the Escrow Agreement; and

3. JCPRD shall have accepted the gift of the Park Site subject to the Permitted Exceptions, the Project Easements, the City Option and Approval Agreement and the Park Use Restrictions.

B. Conditions to Closing. It is hereby recognized, stipulated and agreed by the parties that no party, nor Developer, shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed by such party at Closing unless and until each and all of the following

conditions have either been satisfied or waived by the parties or Developer (collectively the “**Closing Conditions**” and each a “**Closing Condition**”):

1. No Termination Notice shall have been given.
2. The Developer shall have obtained zoning and approval of the Preliminary Development Plan.
3. The TIF Bonds shall have been issued, sold and delivered and the proceeds thereof, after provision for costs of issuance and capitalized interest, shall have been deposited in the Construction Fund, in an amount sufficient to fund the estimated Parks Project Costs; provided that the amount of proceeds shall have been approved by the City and the Developer in their sole discretion prior to issuance of the TIF Bonds.
4. The Governing Body of the City, JCPRD and Developer shall have approved in writing the scope of the Pond Work and the Initial Trails Work and the Park Project Budget.
5. The JCW Agreement shall have been approved and executed by the Developer and JCW and shall be in full force and effect without any defaults, and all conditions set forth therein shall have been satisfied.
6. The JCW Expansion shall have been approved and executed by JCW and the Johnson County Commission, the 1954 Agreement shall have been rescinded and terminated, the Building Permit Protocol (as defined in the JCW Agreement) shall be approved and the Sewer Benefit District (as defined in the JCW Agreement) shall have been formed.
7. The Development Agreement shall have been approved by the Governing Body of the City and the Developer and executed and shall be in full force and effect without any defaults.
8. The Governing Body of the City, JCPRD and the Developer shall have approved and the City, JCPRD and the Developer shall have executed the Memorandum of Agreement.
9. This Agreement shall be in full force and effect without any defaults.
10. The Public Infrastructure Improvements Agreement shall have been approved and executed by the Developer and the City and shall be in full force and effect without any defaults.
11. If JCPRD elects to contract with the Developer to perform the Pond Work, the Park Lakes Agreement shall have been approved and executed by JCPRD and the Developer and shall be in full force and effect without any default. Nothing contained herein shall obligate JCPRD to contract with the Developer to perform the Pond Work.
12. The Governing Body of the City, JCPRD, JCW and Developer shall have approved the Final Plat and the Project Easements.
13. JCPRD shall have completed and approved the Park Master Plan.
14. The Governing Body of the City and Developer shall have approved the original Park Master Plan.

15. The Governing Body of the City, JCPRD and the Developer shall have approved and executed the Escrow Agreement and the Special Warranty Deed.

16. The Governing Body of the City and JCPRD shall have approved any changes to the condition of the Park Site, including pond dredging and improvement work performed in accordance with **Section 2.04(B)**.

17. JCPRD shall have irrevocably committed to the City to accept the City's gift of the Park Site subject to the City Park Approvals, and the City shall be satisfied that the City Park Approvals are enforceable and are subject only to subject to the Permitted Exceptions, the Project Easements, and the Park Use Restrictions.

18. JCPRD and City shall be satisfied that the JCPRD Owner's Policy shall be issued upon Closing, and JCPRD and City shall have entered into a separate assignment agreement in form and content satisfactory to each, providing for the assignment to the City by JCPRD of insurance proceeds paid to JCPRD under the JCPRD Owner's Policy if (a) there is a failure of title, and (b) there is a shortfall of incremental tax revenues, transient guest tax revenues, IRB Sales Tax Exemption and SMAC Grant, required to pay all or any portion of the debt service on the GO TIF Bonds.

Notwithstanding anything herein to the contrary, the Closing must occur on or before December 31, 2016 (the "**Closing Termination Date**"), or any party shall have the right to terminate this Agreement.

C. Failure to Close. Each of the Closing Conditions is conditioned on the complete satisfaction of all other Closing Conditions. If any of the Closing Conditions fail to occur or be waived by the parties on or before the Closing Termination Date, and any other Closing Condition has already occurred, then after the Closing Termination Date the parties shall take all respective actions required so that the subject matter of each Closing Condition is restored to its condition as of the date of the establishment of the District, and in the case of all zoning approvals, zoning classifications shall be restored to the zoning classifications as of the date of the establishment of the District. default and remedies

Section 4.02 Default. A Party (the "**Defaulting Party**") shall be in default under this Agreement if the Defaulting Party or its tenants or assigns fails to keep or perform any covenant or obligation herein contained on such the Defaulting Party's part to be kept or performed, and the Defaulting Party fails to remedy the same within thirty (30) days after another Party (the "**Complaining Party**") has given the Defaulting Party 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 Defaulting Party within such period and diligently pursued until the default is corrected.

Section 4.03 Rights and Remedies. If a default occurs under this Agreement and is continuing, the Complaining Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the Defaulting Party of any provision of this Agreement. The Complaining Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceedings in equity. The prevailing Party in an action to enforce its remedies hereunder shall be entitled to receive from the other Party, subject to Applicable Laws and Requirements, reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the prevailing Party in connection with the enforcement of such actions or remedies.

ARTICLE V

MISCELLANEOUS

Section 5.01 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 a party of any covenant, agreement or undertaking, a non-defaulting party may nevertheless accept from another party 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.

Section 5.02 Force Majeure. In the event any party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, riots, insurrection, environmental restrictions or remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, war terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (“**Force Majeure**”), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

Section 5.03 Term. This Agreement will become effective upon the last to occur of the following events: (i) its approval by the Governing Body of the City and by the Board of Commissioners of JCPRD and (ii) satisfaction of the conditions set forth in **Section 4.01 (“Effective Date”)**. From and after the Effective Date, this Agreement will remain in full force and effect until terminated or amended by mutual agreement of the Governing Body of the City and by the Board of Commissioners of JCPRD. The parties agree to engage in a mutual review this Agreement at ten year intervals (or more frequently by mutual agreement), provided that the failure to conduct such review shall not affect the enforceability of this Agreement.

Section 5.04 Agreement Survives Deed. The provisions of this Agreement shall survive the Closing and shall remain binding upon and inure to the benefit of each of the parties, and their successors or assigns.

Section 5.05 Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 5.06 Amendments. This Agreement may be amended, changed or modified only by a written agreement approved by their respective governing bodies and duly executed by JCPRD and the City.

Section 5.07 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

Section 5.08 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.

Section 5.09 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.

Section 5.10 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 5.11 Time. Time is of the essence in this Agreement.

Section 5.12 Consents and Approvals. Wherever in this Agreement it is provided that a Party shall, may or must give its approval or consent, such Party shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for a Party in any action concerning the another Party's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action or to seek the recovery of attorney fees or other costs in connection with such action.

Section 5.13 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To JCPRD:

Johnson County Park and Recreation District
ATTN: Executive Director
JCPRD Administration Building
7904 Renner Road
Shawnee Mission, KS 66219-9723
Telephone: (913) 826-3404
Facsimile: (913) 492-7275

With a copy to:

Ernest C. Ballweg
Johnston, Ballweg & Modrcin, L.C.
9393 W. 110th
Suite 450
Overland Park, KS 66210
Telephone: (913) 491-6900
Facsimile: (913) 491-4930

To the City:

City of Prairie Village
ATTN: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208
Telephone: (913) 381-6464
Facsimile: (913) 381-7755

With a copy to:

Catherine P. Logan
Lathrop & Gage LLC
10851 Mastin
Suite 1000
Overland Park, KS 66210
Telephone: (913) 451-5168
Facsimile: (913) 451-0875

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

Section 5.14 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.

Section 5.15 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 5.16 Applicable Laws and Requirements. The parties acknowledge and agree that the ability of JCPRD and the City to enter into and perform this Agreement is subject to Applicable Laws and Requirements.

Section 5.17 Non-liability of Officials, Employees and Agents of JCPRD and the City. No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of JCPRD or the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

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

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

**JOHNSON COUNTY PARK & RECREATION
DISTRICT,**

a body corporate organized and existing pursuant to
the laws of the State of Kansas

By: _____
Print Name and Title

Attest:

Print Name and Title

Approved as to Form

Ernest C. Ballweg, Attorney for
Johnson County Park & Recreation
District

CITY:

CITY OF PRAIRIE VILLAGE, KANSAS,
a municipal corporation organized and existing
pursuant to the laws of the State of Kansas

By: _____
Laura Wassmer, Mayor

Attest:

Joyce Hagen Mundy
City Clerk

Approved as to Form:

Catherine P. Logan
City Attorney

EXHIBIT A

PARK AND VILLAGE PROJECT AREA LEGAL DESCRIPTIONS

The following property located in Johnson County, Prairie Village, Kansas:

LOTS 1 THROUGH 12, INCLUSIVE, AND LOT A, EXCEPT THE SOUTH 10 FEET THEREOF, BLOCK B, MEADOWBROOK ACRES, A SUBDIVISION IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS;

AND ALL OF THE SOUTHWEST ONE-QUARTER (SW $\frac{1}{4}$) OF SECTION THIRTY-THREE (33) TOWNSHIP TWELVE (12) RANGE TWENTY-FIVE (25) IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, EXCEPT THAT PART PLATTED AS MEADOWBROOK ACRES; AND EXCEPT THE SOUTH 40 FEET THEREOF IN 95TH STREET; AND EXCEPT THE WEST 30 FEET THEREOF IN NALL AVENUE;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, JOHNSON COUNTY, KANSAS; THENCE NORTH $0^{\circ} 00' 00''$ EAST ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 700.00 FEET TO A POINT; THENCE SOUTH $83^{\circ} 50' 00''$ EAST A DISTANCE OF 1,030.00 FEET TO A POINT; THENCE SOUTH $65^{\circ} 35' 00''$ EAST, A DISTANCE OF 375.00 FEET TO A POINT; THENCE SOUTH $0^{\circ} 00' 00''$ WEST, A DISTANCE OF 429.24 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 33; THENCE SOUTH $89^{\circ} 47' 09''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 33 A DISTANCE OF 1,365.51 FEET TO THE PLACE OF BEGINNING;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: ALL THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, THENCE SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, A DISTANCE OF 676.70 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE CONTINUING SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 605 FEET; THENCE NORTH $0^{\circ} 00' 00''$ EAST, A DISTANCE OF 240 FEET; THENCE NORTH $89^{\circ} 47' 09''$ EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 490 FEET; THENCE SOUTH $25^{\circ} 38' 32''$ EAST, A DISTANCE OF 265.74 FEET TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT;

ALSO: A PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12, RANGE 25, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE AND 88.86 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33; THENCE NORTH 75° EAST, ALONG THE SOUTH LINE OF SOMERSET DRIVE, AS ESTABLISHED BY THE PLAT OF WEST RIDING, A SUBDIVISION OF LAND NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, A DISTANCE OF 454.01 FEET, TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE, SAID SOUTH LINE BEING ON A CURVE TO THE LEFT HAVING A RADIUS OF 640 FEET, A DISTANCE OF 176.13 FEET; THENCE SOUTH $11^{\circ} 43' 23''$ EAST, A DISTANCE OF 183.42 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33; THENCE SOUTH $89^{\circ} 26' 38''$ WEST, ALONG THE SOUTH LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 637.59 FEET, TO THE POINT OF BEGINNING.

EXHIBIT B

PARK AND VILLAGE PROJECT AREA MAP

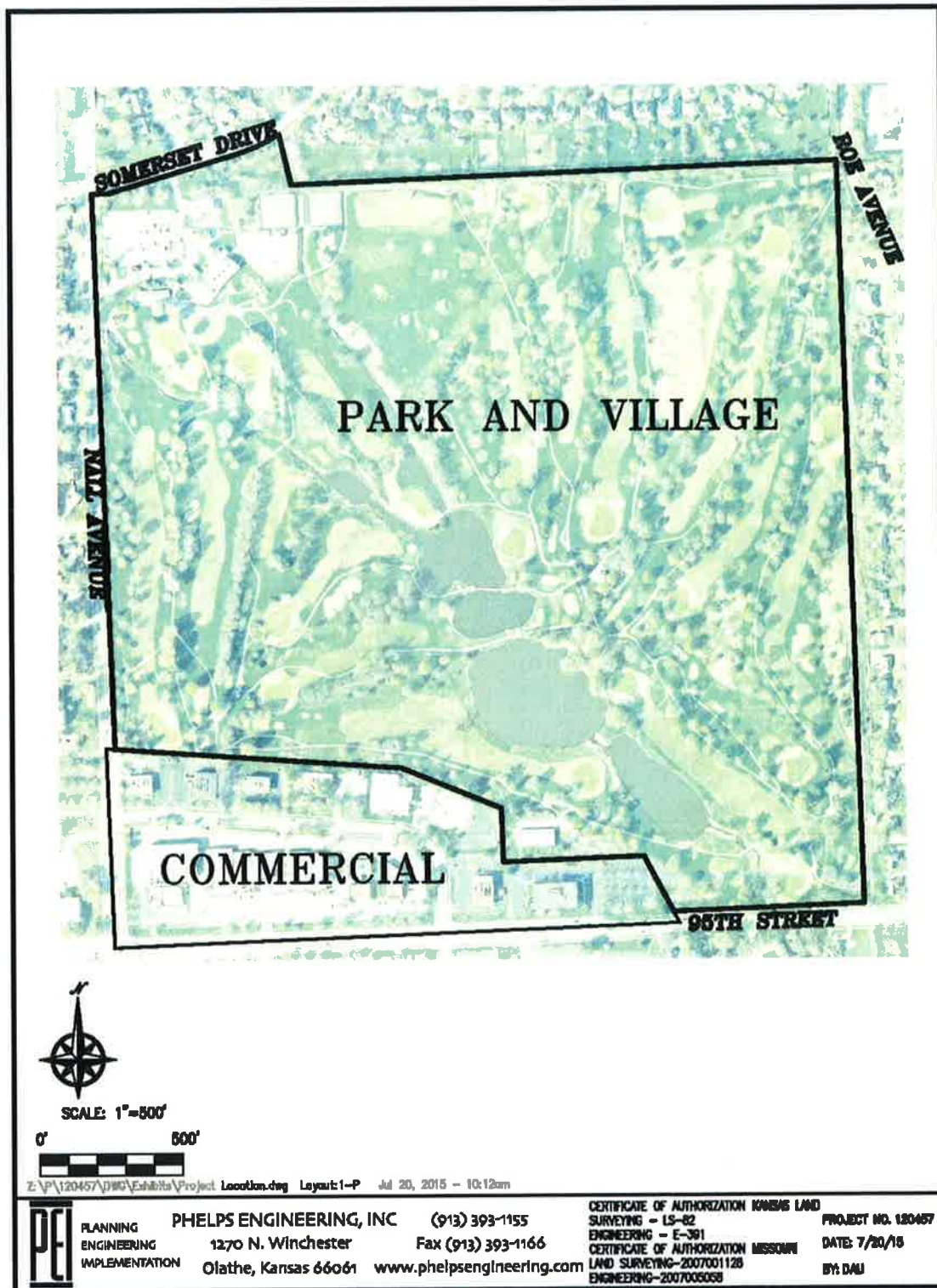


EXHIBIT C **Preliminary Park Budget**

Scope	Park	Public
Land Acquisition	5,872,951	
Pre-Construction (design, engineering, testing, surveys, mobilization)		
Initial Pond Work	977,066	
Initial Priority Trail Work (17,620 LF)	1,322,244	
Transit Improvements	694,570	
Park Improvements	35,000	
(other trails, monument signs, FF&E, landscape, hardscape, design, contingency)	1,735,248	
SUBTOTAL PARK COSTS:	10,637,079	
Grading & Erosion Control		180,225
Streets and Paving		
Parkway Road (Public Street A)		781,457
Park Edge Connector Street (Public Street B)		399,693
Park Access Street (Public Street C)		272,886
Apartment Connections to Public Street C		-
Residential Street (Private Streets D-I)		-
Alleys		-
Storm Sewer on the Site		1,270,063
Street Lighting		276,000
Sanitary Sewer		1,047,443
Off-Site Improvements (Nail Avenue, Roe Avenue)		257,221
Utilities (By Utility Companies)		525,134
Contingency		818,017
SUBTOTAL CONSTRUCTION COSTS:		5,828,139
Fees		
Funding Agreement Reimbursement		250,000
Inspection Fee on City Public Improvements		269,946
Engineering Design & Surveys		539,891
Construction Survey Staking		89,982
Bonds (performance, maintenance, etc)		179,964
TOTAL PROJECT OPINION OF PROBABLE COSTS:	10,637,079	7,157,921
Total of Park & Public Scopes		
Sources (pg 17 of CC's October 2015 FA)	17,795,000	
GO Bonds	9,925,000	
SO Bonds	6,150,000	
Tax Exemption Contribution Est.	1,720,000	
SMAC funds	TBD	
Surplus/(Shortfall)		(3)

PRELIMINARY PLAT



EXHIBIT E

Title of Document: Kansas Special Warranty Deed

Date of Document: _____, 2015

Grantor: MB-18, LLC, a Kansas limited liability company

Grantee: Johnson County Park and Recreation District

Grantee's Mailing Address: JCPRD Administration Building
7904 Renner Road
Shawnee Mission, Kansas 66219

Legal Description See **Exhibit A**

Reference Document No.: N/A

KANSAS SPECIAL WARRANTY DEED

THIS KANSAS SPECIAL WARRANTY DEED is made as of _____, 2015, by and between MB-18, LLC, a Kansas limited liability company ("Grantor"), and JOHNSON COUNTY PARK AND RECREATION DISTRICT, a body corporate and political subdivision organized and existing pursuant to the laws of the State of Kansas ("Grantee" or "JCPRD"), with an address of JCPRD Administration Building, 7904 Renner Road, Shawnee Mission, Kansas 66219.

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) to Grantor paid by Grantee (the receipt of which is hereby acknowledged) does by these presents CONVEY AND GRANT, unto Grantee and its successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Johnson and State of Kansas (the "Property"), to wit:

See Exhibit A.

SUBJECT TO: easements, covenants and restrictions of record, the use restrictions described herein, and taxes and special assessments.

Grantee shall at all times use the Property only as a public park, and for no other use. If Grantee (i) fails to use all or any part of the Property as a public park or (ii) permits any other use of the Property for any period of time whatsoever, Grantee shall be automatically dispossessed of all of Grantee's right, title, and interest in and to the Property, and title to the Property shall automatically vest in the City of Prairie Village, Kansas (the "City") and in such event the Property will continue to be restricted to use as a park and subject to the other restrictions set forth herein.

Additionally, the Property shall be subject to, and Grantee shall enforce, cause to be enforced, and otherwise fully comply with, the following use restrictions (the "Park Use Restrictions"); if and to the extent approved by the City Council of Prairie Village after notice, hearing and adoption of an ordinance, if at all, described in Subsection A, some or all of the Park Use Restrictions shall terminate March 1, 2041 as to all portions of the Property except within the Residential Preservation Area wherein the Park Use Restrictions shall remain in place on a permanent basis.

A. The following uses and/or structures shall be prohibited in all areas of the Property or any portion thereof:

1. skate parks (provided that skating on the ponds and trails shall be permitted at the discretion of the Grantee);
2. permanent areas for off-leash dogs, cats, or other domesticated animals; and
3. permanent athletic fields, goals, bleachers, sports lighting or other actions or indications of programmed organized sports or facilities except within the Community Center Activity Zone as set forth on Exhibit B; goals, lights or apparatuses not affixed to the Property but stored overnight upon the Property shall be considered permanent. Temporary goals for occasional training and practice shall be permitted.

After March 1, 2041, the City Council of Prairie Village, Kansas (the "City Council") may hold a hearing, and by majority vote, determine whether to adopt an ordinance, to be recorded in the Land

Records of Johnson County, Kansas, permitting a previously prohibited use, structure or facility but only after a public hearing has also been held by the City's Planning Commission. Said City Council and Planning Commission hearings shall be held only after written notice delivered to the owners of all real property within 200 feet of the Property, to the Grantee and to the "designated successors." Such notice shall be sent between 10 and 20 days before each hearing and shall contain a description of the proposed use, structure or facility.

B. The following uses shall be prohibited within a residential preservation area (the "Residential Preservation Area") defined as any area within one hundred (100) feet of any current or future residential property line, including but not limited to lots for single family homes, multi-family townhomes, apartments, and senior living facilities:

1. Lights or lighting structures that do not comply with the lighting standards in the lighting plan approved and adopted by the City of Prairie Village, Kansas (the "City").

2. Bathrooms, permanent structures, and parking lots provided that the definition of structure shall not include bridges, trails, lighting permitted by Section B(1) above, residential style utility boxes nor include the parking lot and tennis courts which were set forth on the original Park Master Plan.

C. From the recording date of this Deed until perpetuity, any material changes made now or in the future to the original Park Master Plan attached as Exhibit C shall require the approval of City Council of Prairie Village Kansas after notice and hearing as delineated in Section A hereof.

Only the City, or Grantor or its designated successor neighborhood association may seek injunctive relief and/or specific performance in any court of competent jurisdiction to enforce this document, the Park Use Restrictions or the requirement that the Property be used only as a public park. Written consent from Grantor or its designated successor shall be required to amend the Park Use Restrictions. The term "designated successor" shall mean any association described on Exhibit D. Grantor shall have no right of reversion of title to the Property for Grantee's failure to enforce, cause to be enforced, or otherwise comply with the Park Use Restrictions or the requirement that the Property be used only as a public park.

Grantor, for Grantor and Grantor's successors and assigns, covenants that Grantor is lawfully seized of Grantor's interest in the Property and has good right to convey its interest in the Property and guarantees quiet possession of the Property against the claims of those claiming any right, interest or title through Grantor, except as provided herein, and further covenants that the Property is free from all encumbrances created by Grantor, except as provided above, and Grantor will warrant and defend the Property against all lawful claims of those claiming any right, interest or title through Grantor, except as provided above; but Grantor does not warrant title against those claiming a right, interest or title that arose prior to, or separate from, Grantor's interest in the Property.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the day and year first above written.

GRANTOR:

MB-18, LLC,
a Kansas limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this day of _____, 2015, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say such person is the _____ of **MB-18, LLC**, a Kansas limited liability company, and acknowledged said instrument to be such person's free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Print Name: _____
Notary Public in and for said County and State

My Commission Expires:

EXHIBIT A

Legal Description

Tract T of MEADOWBROOK PARK, a subdivision in the City of Prairie Village, Johnson County, Kansas.

Community Center Activity Zone



EXHIBIT C

Park Master Plan



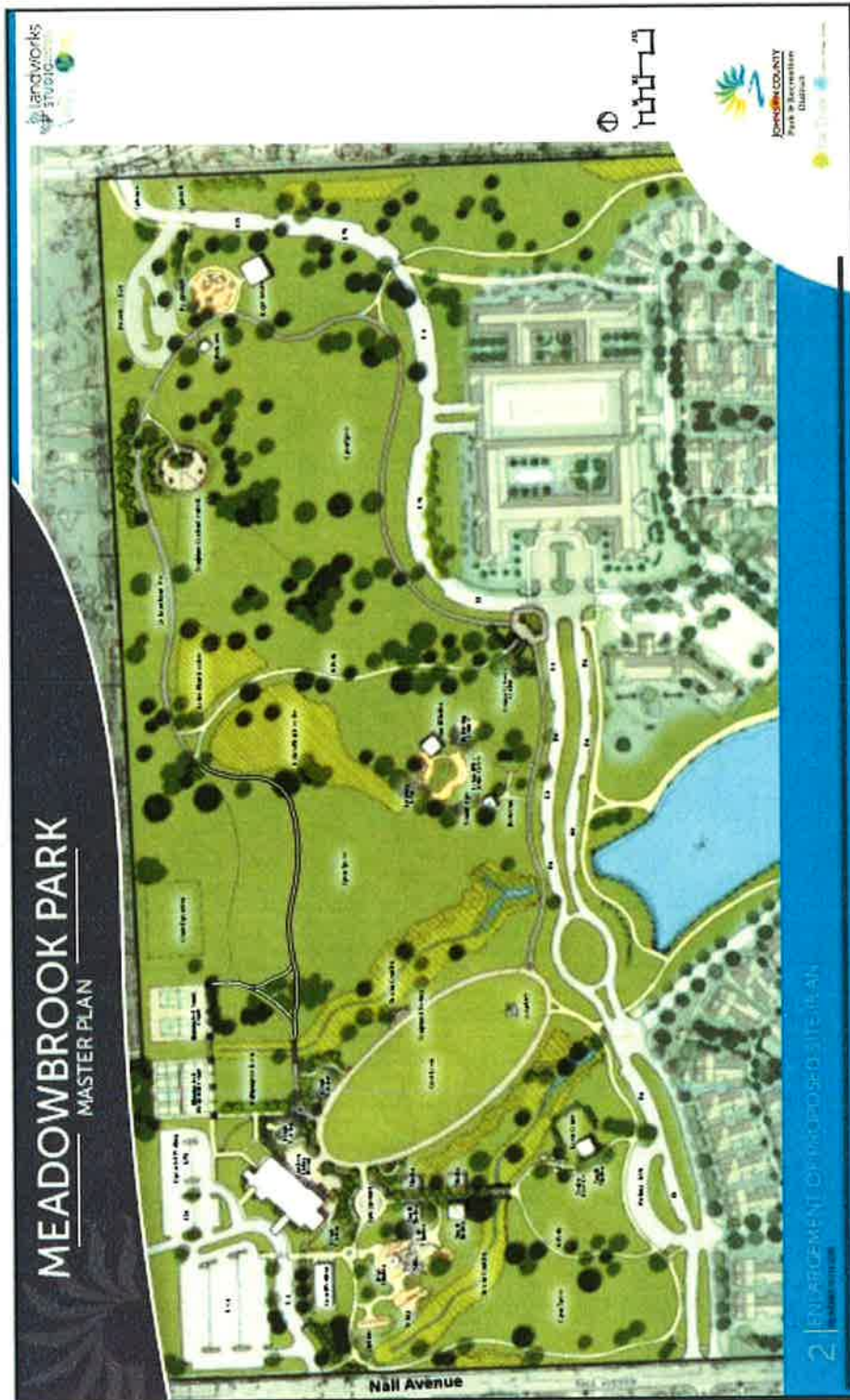


EXHIBIT D

Designated Successor Neighborhood Associations

- 1. That Designated Successor Commercial Association established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below .**
- 2. That Designated Successor Residential Association A established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below.**
- 3. That Designated Successor Residential Association B established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below.**

Other than Grantor, no person, entity or property owner shall have rights under this document unless such entity is designated as one of the designated successor associations referenced in 1 through 3 above pursuant to the RESIDENTIAL AND COMMERCIAL MASTER ASSOCIATION DECLARATION FOR MEADOWBROOK PARK executed and recorded by Grantor ____ 2016, at book____ and page____.

EXHIBIT E

PRELIMINARY PLAT



EXHIBIT F

PROJECT SCHEDULE

Meadowbrook - Projected Ad Valorem Tax (Post Development)						% Assessed on Tax Rolls as of:		
Development	# of Units/SF	Projected Appraised Value per Unit/SF	Projected Appraised Value	Projected Assessed Value	Projected Assessed Value per Unit/SF	Projected Taxes	11/2017	1/1/2018
Development								
Single Family - 48x120	9	\$ 594,664	\$ 5,351,960	\$ 615,418	\$ 68,396	\$ 74,250	25%	40%
Single Family - 50x120	14	\$ 756,846	\$ 10,595,839	\$ 1,216,522	\$ 87,037	\$ 147,000	25%	40%
Single Family - 60x120	1	\$ 628,928	\$ 628,928	\$ 95,327	\$ 95,327	\$ 11,500	25%	40%
Single Family - 60x110	12	\$ 720,805	\$ 8,649,665	\$ 984,711	\$ 82,863	\$ 120,000	25%	40%
Single Family - 65x120	5	\$ 850,550	\$ 4,252,752	\$ 488,068	\$ 97,613	\$ 58,000	25%	40%
Single Family - 80x120	4	\$ 1,225,369	\$ 4,901,477	\$ 563,670	\$ 140,917	\$ 68,000	25%	40%
Single Family - 90x120	1	\$ 1,008,128	\$ 1,008,128	\$ 116,050	\$ 116,050	\$ 14,000	25%	40%
Single Family - 68x110	2	\$ 792,899	\$ 1,585,772	\$ 182,384	\$ 91,182	\$ 22,000	25%	40%
Single Family - 68x135	2	\$ 720,805	\$ 1,441,611	\$ 165,785	\$ 82,863	\$ 20,000	25%	40%
Single Family - 100x100	2	\$ 1,297,450	\$ 2,594,899	\$ 298,413	\$ 149,207	\$ 36,000	25%	40%
Single Family - 90x135	1	\$ 1,492,097	\$ 1,492,097	\$ 171,588	\$ 171,588	\$ 20,700	25%	40%
Townhomes - 30x120	70	\$ 388,443	\$ 27,191,008	\$ 3,191,388	\$ 45,591	\$ 385,000	25%	60%
Multifamily	280	\$ 126,141	\$ 35,319,465	\$ 4,091,738	\$ 14,508	\$ 480,000	25%	100%
Senior Housing	330	\$ 108,121	\$ 35,679,867	\$ 4,103,185	\$ 12,434	\$ 485,000	5%	100%
Inn	44	\$ 180,201	\$ 7,928,859	\$ 911,619	\$ 20,723	\$ 110,000	25%	100%
Retail	5,000	\$ 165,79	\$ 828,928	\$ 207,232	\$ 41,45	\$ 25,000	25%	100%
Total			\$ 150,212,241	\$ 17,386,313	\$ 683,325	\$ 2,097,460		

EXHIBIT G

Title of Document: Kansas Special Warranty Deed

Date of Document: _____, 2015

Grantor: MB-18, LLC, a Kansas limited liability company

Grantee: Johnson County Park and Recreation District

Grantee's Mailing Address: JCPRD Administration Building
7904 Renner Road
Shawnee Mission, Kansas 66219

Legal Description See Exhibit A

Reference Document No.: N/A

KANSAS SPECIAL WARRANTY DEED

THIS KANSAS SPECIAL WARRANTY DEED is made as of _____, 2015, by and between MB-18, LLC, a Kansas limited liability company ("Grantor"), and JOHNSON COUNTY PARK AND RECREATION DISTRICT, a body corporate and political subdivision organized and existing pursuant to the laws of the State of Kansas ("Grantee" or "JCPRD"), with an address of JCPRD Administration Building, 7904 Renner Road, Shawnee Mission, Kansas 66219.

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) to Grantor paid by Grantee (the receipt of which is hereby acknowledged) does by these presents CONVEY AND GRANT, unto Grantee and its successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Johnson and State of Kansas (the "Property"), to wit:

See Exhibit A.

SUBJECT TO: easements, covenants and restrictions of record, the use restrictions described herein, and taxes and special assessments.

Grantee shall at all times use the Property only as a public park, and for no other use. If Grantee (i) fails to use all or any part of the Property as a public park or (ii) permits any other use of the Property for any period of time whatsoever, Grantee shall be automatically dispossessed of all of Grantee's right, title, and interest in and to the Property, and title to the Property shall automatically vest in the City of Prairie Village, Kansas (the "City") and in such event the Property will continue to be restricted to use as a park and subject to the other restrictions set forth herein.

Additionally, the Property shall be subject to, and Grantee shall enforce, cause to be enforced, and otherwise fully comply with, the following use restrictions (the "Park Use Restrictions"); if and to the extent approved by the City Council of Prarie Village after notice, hearing and adoption of an ordinance, if at all, described in Subsection A, some or all of the Park Use Restrictions shall terminate March 1, 2041 as to all portions of the Property except within the Residential Preservation Area wherein the Park Use Restrictions shall remain in place on a permanent basis.

A. The following uses and/or structures shall be prohibited in all areas of the Property or any portion thereof:

1. skate parks (provided that skating on the ponds and trails shall be permitted at the discretion of the Grantee);
2. permanent areas for off-leash dogs, cats, or other domesticated animals; and
3. permanent athletic fields, goals, bleachers, sports lighting or other actions or indications of programmed organized sports or facilities except within the Community Center Activity Zone as set forth on Exhibit B; goals, lights or apparatuses not affixed to the Property but stored overnight upon the Property shall be considered permanent. Temporary goals for occasional training and practice shall be permitted.

After March 1, 2041, the City Council of Prairie Village, Kansas (the "City Council") may hold a hearing, and by majority vote, determine whether to adopt an ordinance, to be recorded in the Land

Records of Johnson County, Kansas, permitting a previously prohibited use, structure or facility but only after a public hearing has also been held by the City's Planning Commission. Said City Council and Planning Commission hearings shall be held only after written notice delivered to the owners of all real property within 200 feet of the Property, to the Grantee and to the "designated successors." Such notice shall be sent between 10 and 20 days before each hearing and shall contain a description of the proposed use, structure or facility.

B. The following uses shall be prohibited within a residential preservation area (the "Residential Preservation Area") defined as any area within one hundred (100) feet of any current or future residential property line, including but not limited to lots for single family homes, multi-family townhomes, apartments, and senior living facilities:

1. Lights or lighting structures that do not comply with the lighting standards in the lighting plan approved and adopted by the City of Prairie Village, Kansas (the "City").

2. Bathrooms, permanent structures, and parking lots provided that the definition of structure shall not include bridges, trails, lighting permitted by Section B(1) above, residential style utility boxes nor include the parking lot and tennis courts which were set forth on the original Park Master Plan.

C. From the recording date of this Deed until perpetuity, any material changes made now or in the future to the original Park Master Plan attached as **Exhibit C** shall require the approval of City Council of Prairie Village Kansas after notice and hearing as delineated in Section A hereof.

Only the City, or Grantor or its designated successor neighborhood association may seek injunctive relief and/or specific performance in any court of competent jurisdiction to enforce this document, the Park Use Restrictions or the requirement that the Property be used only as a public park. Written consent from Grantor or its designated successor shall be required to amend the Park Use Restrictions. The term "designated successor" shall mean any association described on **Exhibit D**. Grantor shall have no right of reversion of title to the Property for Grantee's failure to enforce, cause to be enforced, or otherwise comply with the Park Use Restrictions or the requirement that the Property be used only as a public park.

Grantor, for Grantor and Grantor's successors and assigns, covenants that Grantor is lawfully seized of Grantor's interest in the Property and has good right to convey its interest in the Property and guarantees quiet possession of the Property against the claims of those claiming any right, interest or title through Grantor, except as provided herein, and further covenants that the Property is free from all encumbrances created by Grantor, except as provided above, and Grantor will warrant and defend the Property against all lawful claims of those claiming any right, interest or title through Grantor, except as provided above; but Grantor does not warrant title against those claiming a right, interest or title that arose prior to, or separate from, Grantor's interest in the Property.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the day and year first above written.

GRANTOR:

MB-18, LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this day of _____, 2015, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say such person is the _____ of **MB-18, LLC**, a Kansas limited liability company, and acknowledged said instrument to be such person's free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Print Name: _____
Notary Public in and for said County and State

My Commission Expires:

EXHIBIT A

Legal Description

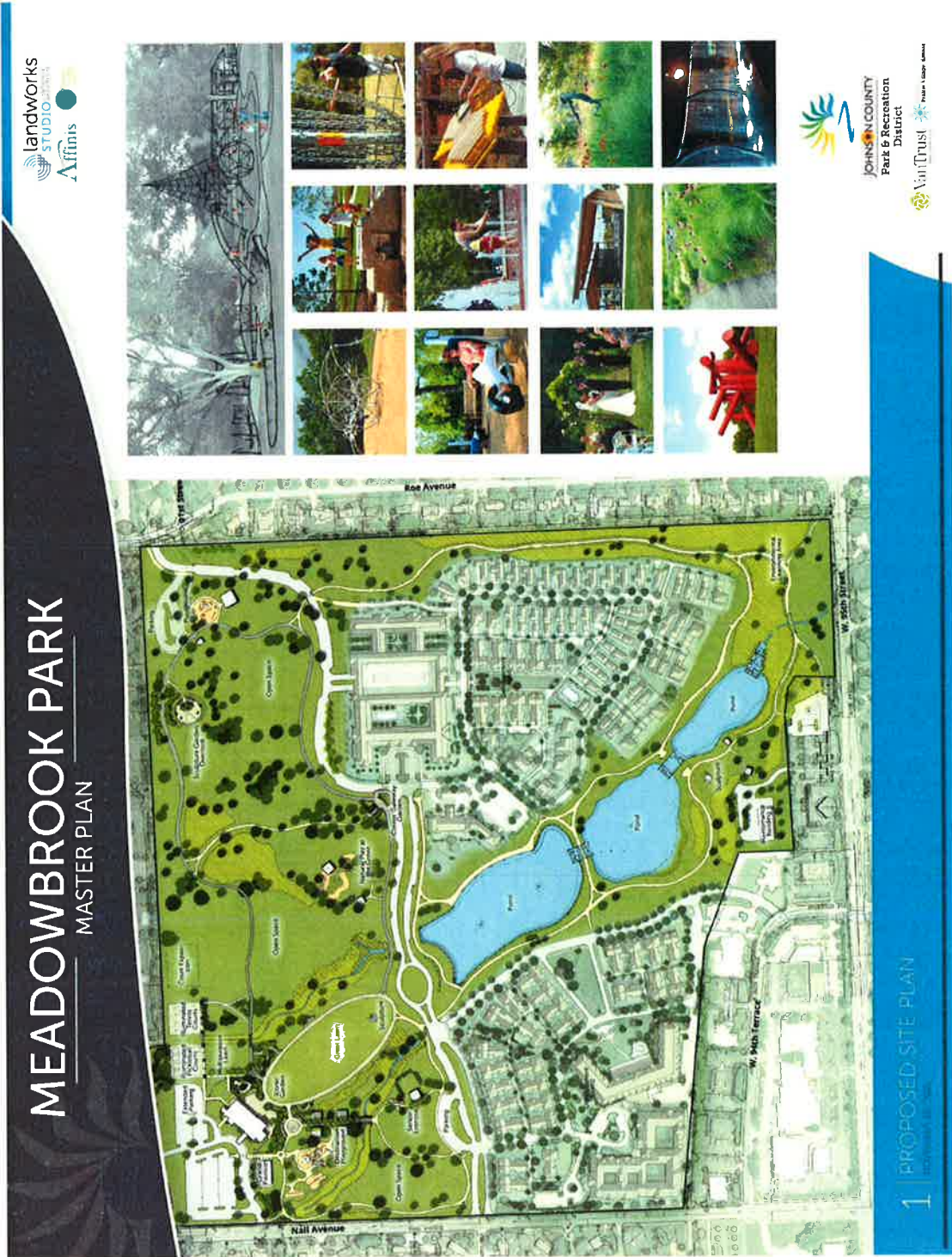
Tract T of MEADOWBROOK PARK, a subdivision in the City of Prairie Village, Johnson County, Kansas.

Community Center Activity Zone



EXHIBIT C

Park Master Plan



landworks
STUDIO
Affinis

JOHNSON COUNTY
Park & Recreation
District
Vot Trust



EXHIBIT D

Designated Successor Neighborhood Associations

- 1. That Designated Successor Commercial Association established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below .**
- 2. That Designated Successor Residential Association A established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below.**
- 3. That Designated Successor Residential Association B established by the Grantor at such times and upon such rules as are set forth in the RESIDENTIAL AND COMMERCIAL MASTER DECLARATION FOR MEADOWBROOK PARK defined below.**

Other than Grantor, no person, entity or property owner shall have rights under this document unless such entity is designated as one of the designated successor associations referenced in 1 through 3 above pursuant to the RESIDENTIAL AND COMMERCIAL MASTER ASSOCIATION DECLARATION FOR MEADOWBROOK PARK executed and recorded by Grantor ____ 2016, at book____ and page____.

EXHIBIT H

CERTIFICATE OF SUBSTANTIAL COMPLETION

Pursuant to **Section 3.02(D)** of the DEVELOPMENT AGREEMENT ("Agreement") between the CITY OF PRAIRIE VILLAGE, KANSAS ("City") and MB-18, LLC ("Developer"), the Developer hereby certifies to the City as follows:

1. That as of _____, 20__, the [**Private Development Site Improvement Work / Hotel Facility / Apartment Facility**] has been substantially completed in accordance with the Agreement.

2. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer's satisfaction of Developer's covenant to construct the [**Private Development Site Improvement Work / Hotel Facility / Apartment Facility**], and to evidence completion of same.

3. The City's acceptance of this Certificate shall evidence the satisfaction of the Developer's covenant to construct the [**Private Development Site Improvement Work / Hotel Facility / Apartment Facility**] and shall evidence completion of same.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20____.

MB-18, LLC

By: _____
Title: _____

Approved this ____ day of _____, 20____

CITY OF PRAIRIE VILLAGE

By: _____
City Administrator

EXHIBIT I
CERTIFICATE OF PLANNED NEIGHBORHOOD UNITS

The undersigned, a duly-authorized representative of the Developer, hereby certifies that the following Planned Neighborhood Units are complete, as defined in Section 8.01 of the Agreement, as of the date below. (Check all that apply.)

APARTMENTS (Target: 280 units)

- ☐ _____ Apartment units certified for occupancy
- ☐ All construction is complete and 90% threshold (252 units) is met through demonstration of certificates of occupancy on or before 4/30/2018.

INN (Residential) (Target: 44 units)

- ☐ _____ Rooms available for transient occupancy
- ☐ All construction is complete and 90% threshold (40 rooms) is met through demonstration of certificates of occupancy on or before 12/31/2017.

INN (Retail) (Target: 5,000 sf)

- ☐ _____ Square feet of retail space available for rental
- ☐ All construction of shell space, but not any tenant improvements, is complete, and 90% threshold (4,500 sq. ft.) is met through demonstration of certificates of occupancy on or before 12/31/2017.

SINGLE FAMILY HOME SITES (Target: 53 sites)†

- ☐ _____ Construction-ready single-family home sites completed
- ☐ At least 27 sites completed on or before the date which is later of (a) the date which is nine (9) months after the issuance of TIF Bonds, and (b) six (6) months after the date that Public Works Department of City is willing to issue a drainage permit for the Single Family Home Sites construction ready site works.
- ☐ At least 48 sites completed on or before 12/31/2017
- ☐ All construction is complete and 90% threshold (48 sites) is available for single-family home construction.

TOWNHOMES (Target: 70 units)

- ☐ _____ Construction-ready townhome sites completed (show total units that will be supported by these sites)



Construction-ready sites supporting at least 63 townhome units complete on or before 12/31/2017

† With respect to the Single Family Site and the Townhomes Site, "completed" means that all horizontal improvements necessary to permit immediate construction of a Single Family Home or Townhome, respectively, are complete, in place and the site is immediately eligible for a building permit.

I represent that I am the _____ (title) of the Developer and am duly-authorized to make this certification on its behalf. All certifications made herein are true and verifiable. I will provide supporting documentation to the City within two business days of request to evidence the certifications herein.

By: _____

Date

EXHIBIT J

Unit Reduction Reallocation Examples

Section 8.01 of the Agreement provides for the reallocation of Incremental Tax Revenues to the benefit of the GO TIF Bonds if both (a) a revenue shortfall exists to repay GO TIF Bonds debt service in any year and (b) the Developer has constructed less than 90% of the target number of Units on the Apartment Site or the Hotel Site, and constructed less than 90% of the target number of Units on the Single Family Site or the Townhome Site. This Agreement does not obligate Developer to construct single family homes or townhomes. A completed Unit on the Single Family Site or the Townhome Site shall consist of a lot that is ready for vertical construction of a single family home or townhome, respectively.

The Preliminary Plat depicts 70 townhome lots. The Townhome Site may be platted such that each set of two adjacent lots is combined, for a total of 35 townhome platted lots. Then, after a townhome has been constructed thereon, such lot will be split or subdivided into two separate lots so that the boundary line between such lots marks the actual location of the common townhome wall. If the Townhome Site is platted such that each set of two adjacent lots is combined into a total of 35 lots, the Townhome Site shall still be deemed to have platted 70 Actual Units for purposes of applying the reallocation formula.

To provide clarity to the intent of the language in Section 8.01, this Exhibit provides three examples of hypothetical Unit Reduction Reallocation calculations.

HYPOTHETICAL #1

Assume it is 2023 and there is a shortfall in the amount of Incremental Tax Revenues allocated to the GO bonds versus debt service due of \$120,000. The Developer constructed 55 construction ready Units in the townhomes Planned Neighborhood Unit, which is less than 90% of the target number of 70 construction ready Units. The Developer's obligation under the Unit Reduction Reallocation formula would be:

Where:

Unit Reduction Reallocation = (Actual Units-Target Units) * TIF Revenue Per Neighborhood Unit

And *where:*

TIF Revenue Per Neighborhood Unit = Year 0 Value Modified for Expected Growth (Year X Value) * Tax Levy / Target Units

then, Unit Reduction Reallocation

$$=(70-55) * (\$3,191,366 * 1.01^{(2023-2016)}) * (\$99.138/1000) / 70$$

$$=15 * \$3,421,576 * \$99.138 / 1000 / 70$$

$$=\$72,687 * 50\% \text{ GO TIF Bonds share of revenue}$$

$$=\$36,344$$

Because \$36,344 is less than the \$120,000 shortfall, the reallocation formula would require a shift of \$36,344 in Incremental Tax Revenues from the benefit of the SO TIF Bonds to the benefit of the GO TIF Bonds during 2023.

HYPOTHETICAL #2

Assume it is 2023 and there is a shortfall in the amount of Incremental Tax Revenues allocated to the GO TIF Bonds versus debt service due of \$30,000. The Developer constructed 55 construction ready Units in the townhomes Planned Neighborhood Unit, which is less than 90% of the target number of 70 construction ready Units. The Developer's obligation under the Unit Reduction Reallocation formula would be:

Where:

Unit Reduction Reallocation = (Actual Units-Target Units) * TIF Revenue Per Neighborhood Unit

And *where:*

TIF Revenue Per Neighborhood Unit = Year 0 Value Modified for Expected Growth (Year X Value) * Tax Levy / Target Units

then, Unit Reduction Reallocation

$$=(70-55) * (\$3,191,366 * 1.01^{(2023-2016)}) * (\$99.138/1000) / 70$$

$$=15 * \$3,421,576 * \$99.138 / 1000 / 70$$

$$=\$72,687 * 50\% \text{ GO TIF Bonds share of revenue}$$

$$=\$36,344$$

Because the shortfall of \$30,000 is less than the result of the Unit Reduction Reallocation formula, the reallocation formula would require a shift of \$30,000—the amount of the actual shortfall—in Incremental Tax Revenues from the benefit of the SO TIF Bonds to the benefit of the GO TIF Bonds during 2023.

HYPOTHETICAL #3

Assume it is 2029 and there is a shortfall in the amount of Incremental Tax Revenues allocated to the GO bonds versus debt service due of \$376,000. The Developer constructed 55 construction ready Units in the townhomes Planned Neighborhood Unit, which is less than 90% of the target number of 70 construction ready Units. Additionally, the Developer constructed 237 Units in the apartments Planned Neighborhood Unit, which is less than 90% of the target number of 280 Units. The Developer's obligation under the Unit Reduction Reallocation formula would be:

Where:

Unit Reduction Reallocation = (Actual Units-Target Units) * TIF Revenue Per Neighborhood Unit

And *where:*

TIF Revenue Per Neighborhood Unit = Year 0 Value Modified for Expected Growth (Year X Value) * Tax Levy / Target Units

then, Unit Reduction Reallocation

$$=[(70-55) * (\$3,191,366 * 1.01^{(2029-2016)}) * (\$99.138/1000) / 70] + [(280-237) * (\$4,103,192 * 1.01^{(2029-2016)}) * (\$99.138/1000) / 70]$$

$$=[15 * \$3,632,072 * \$99.138 / 1000 / 70] + [43 * \$4,669,815 * \$99.138 / 1000 / 70]$$

$$=\$77,159 + \$284,387$$

$$=\$361,547 * 50\% \text{ GO TIF Bonds share of revenue}$$

$$=\$180,774$$

Because \$180,774 is less than the \$376,000 shortfall, the reallocation formula would require a shift of \$180,774 in Incremental Tax Revenues from the benefit of the SO TIF Bonds to the benefit of the GO TIF Bonds during 2029.