

**DEVELOPMENT AGREEMENT
(OLATHE STATION REDEVELOPMENT)**

by and between the

CITY OF OLATHE, KANSAS

and

HOLMES 111 LLC

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and between the **CITY OF OLATHE, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas as a city of the first class (the “**City**”), and **HOLMES 111 LLC**, a Missouri limited liability company authorized to do business in the State of Kansas (the “**Developer**,” and together with the City, the “**Parties**,” and each a “**Party**”), and is dated as of _____, 2017 (the “**Effective Date**”).

RECITALS

WHEREAS, the Developer is the owner of certain real property comprised of approximately 20+/- acres generally located at the southeast corner of South Strang Line Court and South Strang Line Road, all in the City of Olathe, Johnson County, Kansas (the “**Property**”); and

WHEREAS, the City has the authority to undertake community improvement district financing pursuant to the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the “**CID Act**”); and

WHEREAS, on or about May 25, 2017, the Developer submitted a petition (the “**CID Petition**”) to the City requesting the formation of the CID (as defined below) and the imposition of a one-percent (1.0%) tax on the sale of tangible personal property at retail and rendering or furnishing of services in the CID (the “**CID Sales Tax**”) in accordance with the CID Act; and

WHEREAS, pursuant to Ordinance 17-_____, adopted by the City on _____, 2017 (the “**CID Ordinance**”), the City created a Community Improvement District encompassing the Property and the adjacent public right-of-way, the boundaries of which are legally described on Exhibit A and generally depicted on Exhibit B attached hereto (the “**CID**”) and approved the imposition of the CID Sales Tax, all in accordance with the CID Act; and

WHEREAS, the Developer seeks to construct or improve upon the Property certain improvements described in a general manner as consisting of some or all of the following uses, without limitation: retail uses, restaurant uses, hotel uses, and other general commercial and related uses, and any other facilities or improvements associated with or incidental to such uses, including all public and private infrastructure improvements or facilities and, subject to the terms and conditions of this Agreement, all other items allowable under the CID Act (collectively, the “**Project**”), as the Project is generally depicted on the preliminary version of the Site Plan attached hereto as **Exhibit F**; and

WHEREAS, the Developer has also requested the City to issue its industrial revenue bonds (the “**IRBs**”) to enable the Developer to obtain a sales tax exemption certificate on building materials used to construct the Project; and

WHEREAS, the Parties agree that construction and improvement of the Project, and the accompanying CID financing and the IRBs, is to their mutual benefit; and

WHEREAS, the City and the Developer now desire to enter into this Agreement to formalize the development and financing of the Project.

NOW, THEREFORE, in consideration of the foregoing, and 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 do hereby agree as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted 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 “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof,
- G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the CID Petition, and such resolutions and ordinances of the City introduced or adopted by the City Council which create the CID and approved the CID Sales Tax, and the provisions of the CID Act, as amended, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.02. 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:

“**Administrative Service Fee**” means that fee to the City provided by **Section 6.03** hereof, equal to 5.0% of the CID Revenues deposited in the CID Fund per calendar year during the CID Term.

“**Advanced Funds**” means initially the sum of \$10,000, to be held by the City pursuant to **Section 6.01**.

“**Advanced Funds Account**” means an account to be created, held and administered by the City all pursuant to **Section 6.01**.

“**Agreement**” means this Development Agreement (Olathe Station Redevelopment), as amended from time to time.

“**Applicable Law and Requirements**” means 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.

“**Bond Counsel**” means Gilmore & Bell, P.C.

“**Certificate of CID Costs**” means a certificate relating to CID Costs in substantially the form attached hereto as **Exhibit B**.

“**Certificate of Substantial Completion**” means a certificate evidencing the Substantial Completion of the Project (or applicable portion thereof), in substantially the form attached hereto as **Exhibit C**.

“**CID**” means the Community Improvement District Created by the City on August __, 2017 pursuant to Ordinance No. 17-_____.

“**CID Act**” means the Kansas Community Improvement District Act, K.S.A. 12-6a26 through 12-6a36, as amended and supplemented from time to time.

“**CID Costs**” means those costs listed as “CID Reimbursable” in the Project Budget attached as Exhibit D hereto and eligible to be paid from CID Revenues in accordance with K.S.A. 12-6a26 *et, seq.*

“**CID Costs Cap**” means Two Million Four Hundred Sixteen Thousand and 00/100 Dollars (\$2,416,000.00) plus interest, financing costs of Developer, and expenses incurred by the City in connection with the Project.

“**CID Fund**” means the Olathe Station CID Fund, created pursuant to the CID Act and Section 6.02 hereof.

“**CID Sales Tax**” means the 1.00% community improvement district sales tax within the CID, as described in the recitals to this Agreement.

“**CID Revenues**” means 100% of the revenues generated from the CID Sales Tax.

“**CID Term**” means that period of time equal to twenty (20) years beginning on the date the CID Sales Tax is first imposed within the CID.

“**City**” means the City of Olathe, Kansas.

“**City Event of Default**” shall have the meaning set forth in Section 11.02 of this Agreement.

“**City Expenses**” means the expenses described in Section 6.01 of this Agreement.

“**City Representative**” means the Mayor or City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and (if required to be pursuant to Applicable Law and Requirements) approved by the City in accordance with this Agreement.

“**County**” means Johnson County, Kansas.

“**Developer**” means Holmes 111 LLC, a limited liability company organized and existing under the laws of the State of Missouri and authorized to do business in Kansas, and any successors and assigns permitted pursuant to this Agreement.

“**Developer Event of Default**” shall have the meaning set forth in Section 11.01 of this Agreement.

“**Developer Representative**” means Eric Gonsler and such other person or persons designated and duly authorized to act on behalf of the Developer in matters relating to this Agreement.

“**Excusable Delays**” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, power failure, strike, shortage of materials, unavailability of labor, delays in the receipt of Permitted Subsequent Approvals as a result of unreasonable delay on the part of the applicable Governmental

Authorities, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project, the CID and the IRBs, and consistent with this Agreement.

“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.

“Maintenance Plan” means the maintenance plan as set forth in **Exhibit G** hereto.

“Pay As You Go” means “Pay-as-you-go financing” as defined in the CID Act.

“Permitted Subsequent Approvals” means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant, as well as any approvals that have not been obtained as of the Effective Date but that are required to be obtained in connection with the Project pursuant to the REA.

“Plans” means Site Plans, Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with City’s Unified Development Ordinance, applicable laws of Governmental Authorities and this Agreement.

“Predevelopment Agreement” means that certain Predevelopment Agreement by and between the City and the Developer, dated as of June 6, 2017.

“Project” shall have the meaning described in the recitals to this Agreement.

“Project Budget” means the project budget as set forth in **Exhibit D** hereto.

“Project Improvements” shall have the meaning set forth in Section 4.01 hereof.

“Project Schedule” means the project schedule as set forth in **Exhibit E** hereto.

“REA” means that certain Reciprocal Easement Agreement, by and between A.B./Olathe II Limited Partnership, a Delaware limited partnership (“AB”), and 30 West Pershing, LLC, a Missouri limited liability company (“30 West”), dated June 28, 2002, as amended by that certain Amendment to Reciprocal Easement Agreement by and between the Developer, as successor in

interest to AB, and Flik, Inc., a Delaware corporation, as successor in interest to 30 West, as the same may be further amended from time to time.

“**Site Plan**” means the final site development plan for the Project submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City’s Unified Development Ordinance provisions, which may be approved as a whole or approved in phases or stages (a preliminary depiction of which is attached hereto as **Exhibit F**, which is subject to change in Developer’s discretion subject to compliance with Applicable Law and Requirements).

“**Substantial Completion**” has the meaning set forth in Section 4.07.

“**Unified Development Ordinance**” means the Unified Development Ordinance adopted by the City of Olathe, Kansas, as amended from time to time in accordance with the provisions thereof.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

A. **Due Authority**. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law**. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation**. There is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. **No Default.** No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a City Event of Default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer.

The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the Developer's actual knowledge:

A. **Due Authority.** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer and affecting the Project. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. **No Material Change.** (1) The Developer has not, with respect to the Property, incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could materially and adversely affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City in connection with this Agreement.

E. **Governmental or Corporate Consents.** As of the Effective Date, no additional consent or approval is required to be obtained from, and no action need be taken by, or document

filed with, any governmental body or corporate entity, in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

F. **No Default.** No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a Developer Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument affecting the Property to which the Developer is a party or by which the Developer is or may be bound.

G. **Approvals.** Except for Permitted Subsequent Approvals, the Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate the Property as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

H. **Construction Permits.** Except for Permitted Subsequent Approvals, all governmental permits and licenses required by applicable law to construct, occupy and operate the Project have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Project to be constructed.

I. **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations contemplated by this Agreement.

J. **Other Disclosures.** The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 2.03. Developer's Acquisition of the Property. At the time that this Agreement is executed, Developer represents that it has fee simple title to all of the real property in the CID, except for adjacent public right-of-way and as otherwise provided in this Agreement and the CID Petition.

ARTICLE III

REIMBURSEMENT OF DEVELOPER'S CID COSTS

Section 3.01. CID Costs, Generally. Subject to the terms of this Agreement, the City shall reimburse the Developer for CID Costs, up to the CID Costs Cap. The Developer shall be reimbursed on a Pay As You Go basis as further set forth in this Agreement. The City shall only be obligated to reimburse the Developer from the CID Fund in the manner set forth in **Article VI** hereof.

Section 3.02. Developer to Advance Costs. The Developer agrees to advance all CID Costs as necessary to complete the Project, all subject to the Developer's right to terminate this Agreement as set forth in **Section 4.02(E)**. Upon or prior to execution of this Agreement, the Developer shall deposit with the City the funds set forth in **Section 6.01** for the purpose of reimbursing the City for City Expenses related to City planning, legal, administrative and other costs associated with the Project, all of which shall constitute CID Costs reimbursable to Developer (provided such costs are eligible for reimbursement under the CID Act).

Section 3.03. City's Obligation to Reimburse Developer.

A. **Obligation to Reimburse.** Subject to the terms of this Agreement and the conditions in this Section, the City shall reimburse Developer for CID Costs in a total amount not to exceed the CID Costs Cap. The Developer shall be reimbursed for CID Costs from the CID Fund by the City as funds are collected in the CID Fund on a Pay As You Go basis as set forth in **Article VI** hereof.

B. **Timing of Reimbursement.** Subject to the terms of this Agreement, the City shall have no obligation to reimburse Developer until funds are available in the CID Fund and the conditions listed in **Section 6.02(C)** hereof are satisfied.

C. **Source of Reimbursement.** The City shall make payments from the CID Fund on a Pay As You Go basis in the order of priority set forth in **Section 6.02**.

Section 3.04. Developer Reimbursement Process.

A. All requests for reimbursement of CID Costs shall be made in a Certificate of CID Costs in substantial compliance with the form attached hereto as **Exhibit B**. Requests for reimbursement shall be submitted by the Developer to the City not more often than monthly. The Developer shall provide itemized invoices, receipts or such other information reasonably satisfactory to the City to confirm that any such cost has been paid and qualifies as a CID Cost, and shall further provide a summary sheet detailing the costs requested to be reimbursed. Such summary sheet shall show the date such cost was paid, the payee, a brief description of the type of cost paid, and the amount paid. The Developer shall provide such additional information as reasonably requested by the City to confirm that such costs have been paid and qualify as CID Costs.

B. The City reserves the right, upon reasonable written notice to Developer, to have its engineer or other agents or employees inspect all work in respect of which a Certificate of CID Costs is submitted, to examine the Developer's and others' records relating to all expenses

related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of CID Costs to review and respond by written notice to the Developer. If the submitted Certificate of CID Costs and supporting documentation demonstrates that (1) the request relates to the CID Costs; (2) the expense has been paid; (3) Developer is not in material default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certificate of CID Costs and make, or cause to be made, reimbursement from the CID Fund in accordance with **Article VI** (and subject to Section 3.06) hereof, within thirty (30) days of the City's approval of the Certificate of CID Costs. If such funds are not so received by Developer due to the City's inability to process the Certificate of CID Costs within thirty (30) days of approval of the Certificate of CID Costs, the unpaid balance shall be subject to a penalty 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, and Developer shall be relieved of any and all obligations under this Agreement until paid or Developer may terminate this Agreement pursuant to Section 4.02(E); provided, the City shall disburse CID Funds to the Developer on no more than a quarterly basis. If the City reasonably disapproves of the Certificate of CID Costs in accordance with this Article III, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period, in which event the Developer shall have the right to revise and re-submit the Certificate of CID Costs to address the City's reason for disapproval, and the City will review and approve (or disapprove) the revised Certificate of CID Costs in accordance with this Section 3.04. Approval of the Certificate of CID Costs will not be unreasonably withheld, conditioned or delayed.

Section 3.05. Right to Inspect and Audit. The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review and audit, from time to time, all the Developer's books and records relating to the CID Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices); provided, however, that (to the extent it may legally do so) the City agrees to maintain the confidentiality of the foregoing materials and, under no circumstances, allow the same to become public record.

Section 3.06. Limitation on City's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse the Developer for CID Costs shall be limited to monies in the CID Fund and shall not be payable from any other source.

Section 3.07. The CID, Generally. The City shall not, under any circumstances other than by a future written agreement between the parties, terminate the CID or take any action to reduce the CID Term prior to such time as the Developer has been reimbursed for the total CID Costs Cap; except, provided that if Certificate(s) of Substantial Completion for the Project have been approved by the City and the Developer has incurred CID Costs equal to or greater than the CID Costs Cap, the City may terminate the CID.

ARTICLE IV

THE PROJECT

Section 4.01. Scope of the Project. Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause to be constructed, the Project. The Project will include some or all of the following uses, without limitation:

A. Demolition of certain existing improvements; site work to prepare the Property for commercial development; facade renovations of the existing commercial center; landscaping and irrigation within the common areas; hardscape, fountain and furniture features; lighting and signage; and any and all work related to the foregoing, all as generally depicted on the preliminary version of the Site Plan attached hereto as **Exhibit F** (collectively, the “**Project Improvements**”). Notwithstanding the foregoing or anything in this Agreement to the contrary, the Parties recognize and agree that market and other conditions may affect the Developer’s ability to construct the Project and, as such, the development and construction of the Project, including the Site Plan, is subject to change and/or modification in Developer’s discretion, subject to compliance with Applicable Law and Requirements and the terms and conditions of this Agreement.

Section 4.02. Project Schedule.

A. Subject to the terms and conditions of this Agreement, after the Effective Date, the Developer shall use commercially reasonable efforts to promptly secure its financing for construction of the Project and provide the City evidence when it has obtained such financing; provided, however, that failure to secure such financing shall not be deemed a default or a Developer Event of Default hereunder; and provided further, that, notwithstanding the foregoing or anything in this Agreement to the contrary, the Parties’ obligations under this Agreement shall be expressly contingent upon securing adequate financing for the Project in Developer’s sole discretion.

B. Subject to the terms and conditions of this Agreement, after the Effective Date and receipt of all applicable Governmental Approvals, the Developer shall use commercially reasonable efforts to promptly commence (or cause to be commenced), and shall promptly thereafter diligently prosecute to completion, the construction of the Project in substantial accordance with the Project Schedule attached as **Exhibit E**.

C. Subject to the terms and conditions of this Agreement, the Developer shall complete each of its obligations under this Agreement with respect to the acquisition, construction and completion of the Project Improvements substantially in accordance with the Project Schedule, subject to delays caused by force majeure and delays caused by the City. The completion of the Project shall be evidenced by the Developer’s delivery of a Certificate of Substantial Completion in accordance with **Section 4.07** of this Agreement.

D. The City agrees to act in good faith and use its best efforts to timely process and review all Plans and consider the issuance of all necessary permits and other approvals, including building permits, rezoning approvals, preliminary and final plat approval, and all other permits or approvals which are required for the Developer and businesses within the CID to construct the

Project. To the extent the City determines that any Plans or other documents or requests submitted by the Developer for the City's approval are unacceptable, as determined pursuant to the Unified Development Ordinance, the City shall provide a written description detailing the portions of the Plans or documents that are unacceptable.

E. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Parties recognize and agree that market and other conditions may affect the Developer's ability to construct the Project and, as such, the Developer may, at any time, terminate this Agreement by providing written notice of the same to the City, in which event this Agreement shall automatically terminate and (except for the Developer's obligation to reimburse the City for City Expenses incurred by the City, in accordance with Article VI of this Agreement, as of the date of such termination) the Parties will have no further obligations to each other hereunder. In the event this Agreement is terminated pursuant to this Section 4.02(E), the City shall take any and all action to promptly terminate the CID and the CID Sales Tax.

Section 4.03. Project Budget. The estimated Project Budget is attached as **Exhibit D** hereto. The total investment in the Project is estimated at Twenty-Six Million One Hundred Sixty Thousand Eight Hundred Forty-Two Dollars (\$26,160,842).; provided, however, the Parties recognize and agree that market conditions may affect the Project Budget and, as such, the Project Budget is subject to change and/or modification in the Developer's discretion, subject to compliance with the terms and conditions of this Agreement; further provided that Developer may only be reimbursed for CID Costs incurred for improvements listed in the Project Budget, as further set forth in **Section 6.02**.

Section 4.04. Design of Project.

A. In order to further the development of the Project, the City hereby authorizes the Developer to construct, or cause to be constructed, the Project according to the final Plans approved by the City.

Section 4.05. Project Zoning, Planning, Platting and Construction.

A. **Site Plan.** The parties agree and acknowledge that the City has approved, or the City will consider approving, the Site Plan for the Project pursuant to the City's Unified Development Ordinance. The Site Plan will be in substantial conformance with this Agreement; provided the Site Plan may change from time to time, in Developer's sole discretion subject to compliance with the Unified Development Ordinance.

B. **Construction Plans.** After approval of the Site Plan, the Developer shall submit Construction Plans for the Project for review and approval pursuant to the City's Unified Development Ordinance. Construction Plans may be submitted in phases or stages. The Developer agrees that all construction, improvement, equipping, and installation work on the Project shall be done in accordance with the Site Plan, Construction Plans and related documents to be approved by the City in compliance with City's Unified Development Ordinance. Any deviations to the Site Plan must be approved by the City if and to the extent such approval is required pursuant to the City's Unified Development Ordinance.

C. **Construction Permits and Approvals.** Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City's Unified Development Ordinance and any other Applicable Law and Requirements, with respect to such buildings, structures or other work or improvements. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except that the City shall not be required to issue any such permits or approvals for any portion of the Project not in conformance with this Agreement or the Unified Development Ordinance.

D. **Development Schedule.** Subject to the terms and conditions of this Agreement, the Developer shall commence construction of the Project in good and workmanlike manner in accordance with the terms of this Agreement, and shall cause the Project to be completed with due diligence. Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of the Project in order to enable the City to monitor the status of construction and to determine that the Project is being performed and completed substantially in accordance with this Agreement.

E. **Continuation and Completion.** Subject to Excusable Delays and the terms and conditions of this Agreement, once the Developer has commenced construction of the Project, or a particular phase of the Project as permitted under this Agreement, the Developer shall not permit cessation of work on the Project or such phase of the Project for a period in excess of 90 consecutive days or 120 days in the aggregate without prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

F. **Antidiscrimination During Construction.** The Developer, for itself, its successors and assigns, and any contractor with whom the Developer has contracted for the performance of work on the Project, agrees that in the construction, renovation, improvement, equipping, repair and installation of the Project provided for in this Agreement, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, disability, national origin or ancestry.

G. **No Waiver.** Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by the City's Unified Development Ordinance and applicable state law. The Developer acknowledges that satisfaction of certain conditions contained in this Agreement requires the reasonable exercise of the City's discretionary zoning authority by the City's Planning Commission and Governing Body in accordance with the City's Unified Development Ordinance and applicable state law.

H. **Hotel.** The flag of the hotel constructed within the Project shall be approved by the City, which consent will not be unreasonably withheld, conditioned or delayed. Any change in hotel flag for the hotel during the CID Term must be approved by the City, whose consent will not be unreasonably withheld, conditioned or delayed.

I. **Public Art.** Developer will install public art within the Project in compliance with Section 2.82.130 of the Olathe Municipal Code.

Section 4.06. Rights of Access. Representatives of the City shall have the right of access to the Property, upon reasonable notice to Developer in advance, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity.

Section 4.07. Certificate of Substantial Completion. Promptly after the Substantial Completion of the Project (or applicable portion thereof) in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City. “**Substantial Completion**” shall mean that the Developer shall have been granted a Temporary Certificate of Occupancy by the City Building Official and shall have completed all work as required by this Agreement with respect to the applicable portion of the Project. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit C**. The City shall, within ten (10) 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 construct the applicable portion of the Project to which the Certificate of Substantial Completion relates.

ARTICLE V USE OF THE CID

Section 5.01. Prohibited Uses.

A. No Prohibited Uses will be allowed within the Project. For purposes of this Section 5.01, the term “**Prohibited Uses**” means: (i) any traditional quick-serve drive-thru restaurants such as McDonald’s and Wendy’s (provided, however, the foregoing restriction shall not apply to any upscale fast-casual dining establishments including, without limitation, Panera Bread or SPIN! Neapolitan Pizza, which may include a drive-thru component), (ii) storage (except the operation of a small warehouse or mini-warehouse operated in connection with and ancillary to a permitted retail use), (iii) adult business establishment as defined in Chapter 5.50 of the Olathe Municipal Code, or (iv) distance-restricted businesses as defined in Chapter 5.43 of the Olathe Municipal Code, nor may any businesses within the Project be relocated from within 1 mile of an existing location within Olathe unless such relocation is approved by the City in accordance with this Section 5.01. The City shall respond to the Developer within **ten (10) business** days of the receipt of any such communication. The Developer shall promptly notify the City Manager and the Director of Resource Management upon the execution of any such legal obligation for the sale and/or lease of property within the CID.

B. The City Manager or his designee shall have authority to act on behalf of the City for purposes of making all determinations required of the City in this **Section 5.01**.

C. The City approval required for a relocation pursuant to this **Section 5.01** shall not be unreasonably withheld, conditioned, or delayed, and the City hereby agrees that such approval shall specifically be granted if the business to be relocated: (i) approaches the Developer about its desire to relocate, (ii) is likely to relocate (either inside or outside of the City) regardless of the Project, or (iii) by its relocation to the Project, would increase the square footage of its leased premises or otherwise improve its business and/or operating conditions.

Section 5.02. Operation of Project.

A. **Compliance with Applicable Laws.** The Project shall comply with all applicable building and zoning, health, property maintenance, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the Unified Development Ordinance and any Applicable Law and Requirements for the construction and operation of the Project, including but not limited to obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

B. **Maintenance.** During the term of this Agreement, Developer shall cause the Project and all parts thereof to be maintained, preserved and kept in good repair and working order and in good and safe condition, consistent with industry standards for similarly situated projects in the greater metropolitan Kansas City area. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Law and Requirements, and as long as the same do not materially adversely affect Developer's ability to perform its obligations under this Agreement. Additionally, the Developer will diligently maintain all public access drives, parking areas, landscape areas, and open space areas within the Project, and will repair any and all damage to such areas in a timely manner, in accordance with all applicable codes and property maintenance standards implemented for similarly situated retail centers in the City of Olathe, Kansas, and the Project shall otherwise be maintained in accordance with the "Maintenance Plan" attached hereto as Exhibit G.

Section 5.03. Intentionally Omitted.

Section 5.04. Sales Tax Information.

A. The Developer shall provide the City written notice of all current tenants of the Project within thirty (30) days of the opening or closing for business of any business within the Project, and at all other times upon the written request of the City Manager or the Director of Resource Management.

B. Except for existing leases as of the Effective Date, the Developer agrees to use commercially reasonable efforts to cause all prospective assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the CID following the Effective Date to be obligated by written contract (lease agreement or other enforceable

document) to provide to the City simultaneously with submission to the Kansas Department of Revenue the monthly sales tax returns for their facilities in the CID, and to make this obligation a covenant running with the land enforceable against all businesses operating in the CID that will only terminate: (i) upon the passage by the City of an ordinance terminating the CID; or (ii) upon termination of this Agreement as provided hereunder. The Developer hereby agrees that it will use commercially reasonable efforts to ensure that each such prospective lease agreement provides that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such tenant or purchaser.

C. To the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3657 and the City shall take all actions necessary to preserve the confidentiality thereof and to ensure that, under no circumstances, will such information become public record.

Section 5.05. Taxes, Assessments, Encumbrances and Liens.

A. So long as the Developer owns the real property within the CID, the Developer shall pay (or cause to be paid), prior to delinquency, all real estate taxes and assessments on the real property owned by the Developer within the CID. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

B. Developer agrees to use commercially reasonable efforts to ensure that no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Project as a result of the acts of the Developer, its agents or independent contractors.

Section 5.06. Financing During Construction; Rights of Holders.

A. **No Encumbrances Except Mortgages during Construction.** Notwithstanding any other provision of this Agreement, mortgages are permitted for the acquisition, construction, renovation, improvement, equipping, repair and installation of the Project and to secure permanent financing thereafter. However, nothing contained in this paragraph is intended to permit or require the subordination of general property taxes, special assessments or any other statutorily authorized governmental lien to be subordinate in the priority of payment to such mortgages.

B. **Holder Not Obligated to Construct Improvements.** The holder of any mortgage authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to

devote the CID to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

C. **Notice of Default to Mortgage Holders; Right to Cure.** With respect to any mortgage granted by Developer as provided herein, whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Project, the City shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, but only if City has been requested to do so in writing by Developer. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to and with the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, that portion of the Project to which the lien or title of such holder relate, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

D. The restrictions on Developer financing in this Section are intended to and shall apply only to financing during the construction period for the improvements and any financing obtained in connection therewith. Nothing in this Agreement is intended or shall be construed to prevent the Developer from obtaining any financing for the Project or any aspect thereof.

Section 5.07. Covenant for Non-Discrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the CID, nor shall the Developer itself or any person claiming under or through it establish or, to the actual knowledge of Developer or such other person claiming under or through it, permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the CID.

The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the CID or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

**ARTICLE VI
REIMBURSEMENT OF CID COSTS;
COMMUNITY IMPROVEMENT DISTRICT FINANCING**

Section 6.01. Advanced Funds Account.

A. **Creation of Account; Initial Deposit.** The City acknowledges receipt from the Developer of a prior deposit with the City equal to the sum of Ten Thousand Dollars (\$10,000.00) (the “**Advanced Funds**”), to be held by the City in a separate, segregated account of the City to be known as the “**Advanced Funds Account.**” The City may invest the Advanced Funds in the same manner as other finds of the City are invested, and interest earnings shall remain in the Advanced Funds Account.

B. **Use and Replenishment of Advanced Funds.** The City shall use the Advanced Funds for payment or reimbursement of City costs and expenses and legal and other third-party professional fees and expenses incurred by the City in connection with providing the necessary third party legal, financial and planning assistance, including consultants engaged by the City, to implement, administer and enforce this Agreement, create the CID, and implement the CID Sales Tax and the IRBs (the “**City Expenses**”); provided, however, the Developer’s prior written approval shall be required before the City engages any consultant or advisor other than Columbia Capital Management , LLC (as financial advisor) and Gilmore & Bell, P.C. (as bond counsel). The City shall submit to the Developer an itemized statement of actual payments made from the Advanced Funds Account for such City Expenses on a monthly basis. The Developer shall advance to the City the amounts set forth on such statements within thirty (30) days of receipt thereof, which shall be deposited in the Advanced Funds Account so that the balance of the Advanced Funds Account remains at Ten Thousand Dollars (\$10,000.00). If such funds are not received, the unpaid balance shall be subject to a penalty 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, and the City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to **Article XI** hereof. Developer shall supply the Advanced Funds in a timely manner so that City activities may continue without interruption. As soon as CID Revenues sufficient to fully reimburse the Developer for the CID Costs Cap have been paid or reimbursed to the Developer, the Developer shall have no further obligation to pay City Expenses; except, provided that the Developer shall remain responsible for any accrued but unpaid City Expenses incurred up to the date such CID Revenues were first received by the City and further provided that the Developer shall remain responsible to maintain the balance of the Advanced Funds Account at Ten Thousand Dollars (\$10,000.00) until thirty (30) days following the City’s acceptance of the Certificate of Substantial Completion for the Project. Notwithstanding the foregoing or anything in this Agreement to the contrary, no City staff costs, other than costs included in City-imposed fees, will constitute City Expenses, and Developer shall have no personal financial liability to pay the City Expenses set forth herein.

C. **Reimbursement of Advanced Funds.** The initial deposit by the Developer to establish the Advanced Funds Account, the money paid by the City from the Advanced Funds Account, and any additional funds paid by the Developer to the City to replenish the Advanced Funds Account shall be CID Costs which may be reimbursed from the proceeds of the CID Sales Tax in the order of priority set forth in **Section 6.02.** The deposit of funds by the Developer pursuant to this Section does not in any way mitigate or lessen the Developer’s obligation to pay or reimburse the City for certain fees and expenses to the extent otherwise required by this Agreement.

D. **Return of Advanced Funds.** Thirty (30) days following the City's acceptance of the Certificate(s) of Substantial Completion for each portion of the Project, the City shall remit to the Developer any amounts that have been advanced under this Section (including interest earnings on such amounts) and which have not been spent for costs incurred by the City pursuant to this Section.

Section 6.02. CID Fund.

A. **Creation of CID Fund; Deposit of CID Revenues.** The City shall establish and maintain a separate fund and account known as the Olathe Station CID Fund (the "CID Fund"). All CID Revenues shall be deposited into the CID Fund.

B. **Disbursements from the CID Fund.** All disbursements from the CID Fund shall be made only to pay the CID Administrative Service Fee and CID Costs. Such disbursements shall be made in the following order of preference:

1. Payment of CID Administrative Service Fee pursuant to Section 6.03;
2. Reimbursement of CID Costs incurred by the Developer, subject to the CID Costs Cap.

C. **Conditions Precedent to Reimbursements.** Developer hereby understands and agrees that it shall not receive any reimbursements from the CID Fund unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

1. Developer submits a Certificate of CID Costs for CID Costs of the Project which are included in the Project Budget (Exhibit D hereto) and have been approved administratively by the City Planning Division; and
2. City has approved the Certificate of CID Costs; and
3. Developer shall be in full compliance with the terms and conditions of this Agreement and the Maintenance Agreement; and
4. With respect to the CID Costs that are the subject of the request for reimbursement, the Developer shall have advanced all costs and shall have provided evidence of such advances; and
5. The request for reimbursement shall be for CID Costs relating to a portion of the Project for a which a Certificate of Substantial Completion has been submitted to and approved by the City; and
6. Developer shall have fully paid all outstanding property taxes on the Property, subject to Developer's legal rights to protest.

Section 6.03. City CID Administrative Service Fee. The City shall be entitled to collect the CID Administrative Service Fee from the annual CID Revenues, which shall be excluded from the CID Costs Cap. The CID Administrative Service Fee shall be used to cover the administration and other City costs during the CID Term and shall be in addition to the costs identified in the Project Budget. The CID Administrative Service Fee may be paid monthly from the CID Revenues deposited in the CID Fund. The CID Administrative Service Fee shall be deemed a CID Cost.

**ARTICLE VII
INTENTIONALLY OMITTED**

**ARTICLE VIII
INDUSTRIAL REVENUE BONDS**

Section 8.01. Industrial Revenue Bonds. The City agrees to issue industrial revenue bonds (“IRB” or “IRBs”) for the Project, and to use its best efforts to obtain a sales tax exemption certificate, to provide Developer with a sales tax exemption on construction materials in connection with the Project.

**ARTICLE IX
ASSIGNMENT; TRANSFER**

Section 9.01. Transfer of Obligations.

A. Except as otherwise provided in this Agreement, including (without limitation) this Section 9.01, the rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City Manager, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of this Agreement being assigned. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the assignment is of or relates to a portion of this Agreement, such obligations, conditions and restrictions to the extent that they relate to such portion), in which event the Developer shall be relieved from any such obligations so assigned.

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

CID Revenues as set forth herein, except as specifically authorized in writing by the Developer; and (ii) no transferee or owner of property within the CID except the Developer shall have any obligations under this Agreement unless and until expressly assumed in writing by such transferee or owner.

C. Notwithstanding anything in this Agreement to the contrary, the foregoing restrictions on assignment shall not apply to (and City approval shall not be required for): (a) any security interest granted to secure indebtedness to any construction or permanent lender (including, without limitation, collateral assignment of the Developer's rights hereunder to receive CID Revenues), (b) any assignment to an Affiliate (as defined below), (c) the sale, rental and leasing of portions of the CID for the uses permitted under the terms of this Agreement, or (d) the assignment of Developer's right to reimbursement of CID Revenues hereunder to a single third party, upon written notice to the City of the name and address of such third party. For purposes of this Agreement, the term "Affiliate" means any person, entity, subsidiary, affiliate or group of persons or entities in which the ownership or membership is owned or controlled by the Developer or a majority of its partners.

Section 9.02. Corporate Reorganization. Nothing herein shall prohibit (or require City approval to allow) the Developer from forming additional development or ownership entities to replace or joint venture with Developer for the purpose of business and/or income tax planning.

Section 9.03. Transfer of the CID, or the Buildings or Structures Therein.

A. Notwithstanding anything in this Agreement to the contrary, there shall be no limitation on (and City approval shall not be required for) the sale, transfer or leasing of the CID (or any part thereof); provided, however, that upon such sale, transfer or leasing: (i) Developer shall not be relieved from any obligations set forth in this Agreement unless and until the City specifically agrees to release the Developer; and (ii) such purchaser, transferee or lessee shall not be subject to any obligations under this Agreement unless and until expressly assumed in writing by such purchaser, transferee or lessee.

**ARTICLE X
GENERAL COVENANTS**

Section 10.01. Indemnification of City.

A. Developer agrees to 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:

1. The Developer's actions and undertakings in the implementation of this Agreement;

2. The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and.
3. Any expense incurred by the City resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

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

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 10.02. Insurance.

A. So long as this Agreement is in effect, Developer shall maintain or cause to be maintained insurance with respect to the Project covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation and general liability) and in such amounts as, in the reasonable judgment of Developer, are adequate to protect the Developer and the Project. Throughout the CID Term, Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance demonstrating compliance with this Section.

Section 10.03. Obligation to Restore.

A. Restoration of Project by Developer. The Developer hereby agrees that if any portion of the Project owned by it shall be damaged or destroyed, in whole or in part, by fire or

other casualty, the Developer shall, to the extent of available insurance proceeds, 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; provided, however, that if available insurance proceeds are insufficient to so restore, replace or rebuild, as determined by Developer in its reasonable judgment, then Developer may terminate this Agreement and, except as expressly provided otherwise herein, the Parties shall have no further obligations to each other under this Agreement. The Developer agrees that it shall use commercially reasonable efforts to 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 Project 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 Project owned by it by fire or other casualty.

Section 10.04. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the CID Costs or 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.

ARTICLE XI DEFAULTS AND REMEDIES

Section 11.01. Developer Event of Default. Subject to Section 11.05, a “**Developer Event of Default**” shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 11.02. City Event of Default. Subject to Section 11.05, the occurrence and continuance of any of the following events shall constitute a “**City Event of Default**” hereunder:

Default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to

be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 11.03. Remedies Upon a Developer Event of Default.

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate Developer's rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.
3. The City may suspend reimbursement to Developer of CID Costs until such time as the Developer Event of Default has been fully remedied.

B. Upon termination of this Agreement pursuant to this Section 11.03, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

F. Notwithstanding the foregoing or anything in this Agreement (including, without limitation, this Section 11.03 hereof) to the contrary, under no circumstances will: (i) Developer be liable for any special, punitive, remote, or consequential damages, including (without limitation) lost tax revenues; or (ii) the City or any third party be entitled to specifically enforce construction of the Project (or any portion thereof) by the Developer.

Section 11.04. Remedies Upon a City Event of Default.

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law or in equity:

1. The Developer shall have the right to terminate this Agreement and the Developer's obligations hereunder;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Each of the Developer's remedies provided hereunder shall be cumulative and in addition to each other such remedy, and the exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 11.05. Excusable Delays. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay.

Section 11.06. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

ARTICLE XII GENERAL PROVISIONS

Section 12.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 12.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the CID. The City shall have the right, if this Agreement or covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 12.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 12.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 12.05. Agreement Controls, The Parties agree that the Project will be implemented as agreed in this Agreement, subject to the terms and conditions hereof. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of CID Costs and all other methods of implementing the Project. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the Predevelopment Agreement and that expand upon the estimated and anticipated sources and uses of funds to implement the Project. This Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof (including, without limitation, the Predevelopment Agreement) and is a full integration of the agreement of the Parties.

Section 12.06. Conflicts of interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. Upon receiving notice of such possible conflict, the City shall promptly disclose the same to Developer in writing and, from that point forward until a the Parties reach a mutually-agreeable resolution, keep Developer apprised of the status of such possible conflict.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its actual knowledge, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 12.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the expiration of the CID Term or until the Developer has been reimbursed for all CID Costs incurred by it in connection with the Project (subject to the CID Costs Cap), whichever occurs first.

Section 12.08. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 12.09. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 12.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 12.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section; provided, however, that (except as expressly provided otherwise herein or required pursuant to Applicable Law and Requirements) such supplemental agreement, request, demand, approval, notice or consent shall not require a public hearing before the City Council or formal approval thereof via resolution, ordinance or otherwise.

Section 12.12. Notice. All notices and requests required or desired to be given pursuant to this Agreement shall be sent as follows:

To the City:

City Clerk's Office
City of Olathe
P.O. Box 768
Olathe, KS 66051-0768

With a copy to:

Ronald R. Shaver, City Attorney
City of Olathe
P.O. Box 768
Olathe, KS 66051-0768

and

Gary A. Anderson
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108

To the Developer:

Holmes 111 LLC
Attn: Eric Gonsler
4520 Madison Avenue #300
Kansas City, MO 64111

With a copy to:

Evan F. Fitts
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

or at such other addresses as the Parties may indicate in writing to the other in accordance with the provisions of this Agreement (with at least 10 days' notice of such change in writing), either by personal delivery, reputable overnight delivery service (such as UPS or FedEx), or by certified mail, return receipt requested. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered two (2) business days after deposited in the United States Mail; (b) personal delivery shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service.

Section 12.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Any action to enforce the provisions of this Agreement shall be brought in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

Section 12.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

Section 12.15. Intentionally Omitted.

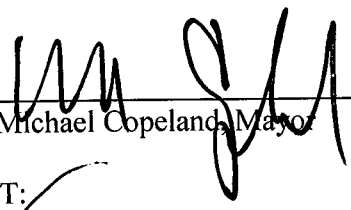
Section 12.16. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or unduly delayed.

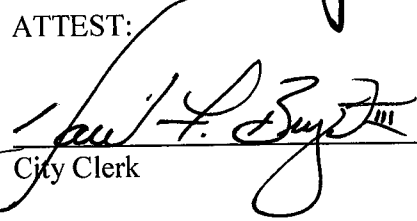
Section 12.17. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF OLATHE, KANSAS

By: 
Michael Copeland, Mayor

ATTEST:

City Clerk

(SEAL)



HOLMES 111 LLC


By: 
Printed Name: ERIC GONSHER
Title: MANAGER

EXHIBIT A

LEGAL DESCRIPTION OF CID

Lots 1 and 3, Olathe Station Two Replat, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recording plat thereof.

ALSO INCLUDING:

All adjacent Right-of-Way.

EXHIBIT B

FORM OF CERTIFICATE OF CID COSTS

CERTIFICATE OF CID COSTS

TO: City of Olathe, Kansas
Attention: City Manager

Re: Olathe Station CID Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Development Agreement (Olathe Station Redevelopment), dated as of _____, 201__ (the "Agreement"), between the City of Olathe, Kansas ("City") and Holmes 111, LLC ("the Developer").

In connection with the Agreement, the undersigned hereby states and certifies that, to his or her actual knowledge:

1. Each item listed on *Schedule 1* hereto is a CID Cost and was incurred in connection with the construction of the Project.
2. These CID Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the CID Fund, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith,
5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20__.

HOLMES 111 LLC

By: _____
Printed Name: _____
Title: _____

Approved for Payment this day of _____, 20__.

CITY OF OLATHE, KANSAS

By: _____
Title: _____

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*Pursuant to **Section 4.07** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction as to the accuracy of the certifications contained in this Certificate.*

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Holmes 111 LLC (the "Developer"), pursuant to that certain Development Agreement (Olathe Station Redevelopment), dated as of _____, 201__, between the City of Olathe, Kansas (the "City") and the Developer (the "Agreement"), hereby certifies to the City, to its actual knowledge, as follows:

1. That as of _____, 20____, the construction, renovation, repairing, equipping and constructing of the Project (as such term is defined in the Agreement), or applicable portion thereof, has been substantially completed in accordance with the Agreement.

2. The Project (or applicable portion thereof) has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).

3. Lien waivers for applicable portions of the Project have been obtained, or, to the extent that a good faith dispute exists with respect to the payment of any construction cost with respect to the Project, Developer has provided the City with a bond or other security reasonably acceptable to the City.

4. This Certificate of Substantial Completion is accompanied by (a) the project architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), ratifying that the Project has been substantially completed in accordance with the Agreement; and (b) a copy of the Temporary Certificate(s) of Occupancy issued by the City Building Official with respect to the Project (or applicable portion thereof).

5. 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 all obligations and covenants with respect to the Project (or applicable portion thereof).

6. The City's acceptance of this Certificate shall evidence the satisfaction of the Developer's agreements and covenants to construct the Project (or applicable portion thereof).

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

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_____.

HOLMES 111 LLC,
a Missouri limited liability Company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF OLATHE, KANSAS

By: _____

Name: _____

Title: _____

(Insert Legal Description)

EXHIBIT D**ESTIMATED PROJECT BUDGET**

ESTIMATED BUDGET			
Line Item	Notes	Est. Cost	CID Reimbursable
Land Acquisition		\$ 5,117,842	\$ -
Est. Hard Costs			
Landscaping, Hardscapes, Irrigation, Fountain, Furniture		\$ 450,000	\$ 450,000
Concrete & Asphalt		\$ 1,000,000	\$ -
Demolish Joe's Crabshack	6,500 SF @ \$10 PSF	\$ 65,000	\$ -
Chuy's	6,800 SF @ \$200 PSF	\$ 1,360,000	\$ -
Demolish Retail	47,000 SF @ \$8 PSF	\$ 376,000	\$ 376,000
New Retail/Restaurant 1	7,000 SF @ \$225 PSF	\$ 1,575,000	\$ -
New Retail/Restaurant 2	20,000 @ \$225 PSF	\$ 1,575,000	\$ -
New Hotel		\$ 10,000,000	\$ -
Facade Renovation of Shopping Center		\$ 500,000	\$ 500,000
TI Allowance Shopping Center	20,000 SF @ \$25 PSF	\$ 500,000	\$ -
Lighting		\$ 150,000	\$ 150,000
Signage		\$ 200,000	\$ 200,000
Site Work / Pad Raising		\$ 740,000	\$ 740,000
Total Hard Costs		\$ 18,491,000	\$ 2,416,000
Est. Soft Costs			
Architecture & Engineering		\$ 450,000	\$ -
Appraisals		\$ 15,000	\$ -
Geotechnical/Testing/Inspection/Environmental		\$ 60,000	\$ -
Sanitary Sewer & Water Distribution		\$ 50,000	\$ -
Traffic Study		\$ 25,000	\$ -
Design and Construction Admin.		\$ 200,000	\$ -
Carry Costs		\$ 100,000	\$ -
City Development Fees		\$ 225,000	\$ -
Survey/Topographical		\$ 15,000	\$ -
Legal		\$ 100,000	\$ -
Site/Permit Fees		\$ 50,000	\$ -
Leasing Commission		\$ 612,000	\$ -
Development Fees		\$ 500,000	\$ -
Contingency		\$ 150,000	\$ -
Total Soft Costs		\$ 2,552,000	\$ -
TOTAL PROJECT COST		\$ 26,160,842	\$ 2,416,000

EXHIBIT E

ESTIMATED PROJECT SCHEDULE

Area	Project Component	Estimated Completion Date
1	Façade Renovations to Existing Retail – Far NEC of Property	Approx. 18 months from Effective Date
2	Site Improvements around Chuy's & Entry Feature	Approx. 24 months from Effective Date
3	Retail/Restaurant Uses – NWC of Property	*Based on market conditions and demand
4	Site Improvements around Hotel – SWC of Property	*Based on market conditions and demand

*NOTE: Although market and other conditions (including, without limitation, securing tenants and financing) may affect the Developer's ability to construct Areas 3 and 4 of the Project, Developer will endeavor in good faith and with due diligence and dispatch to complete Areas 3 and 4 of the Project as soon as possible based on market conditions and demand.

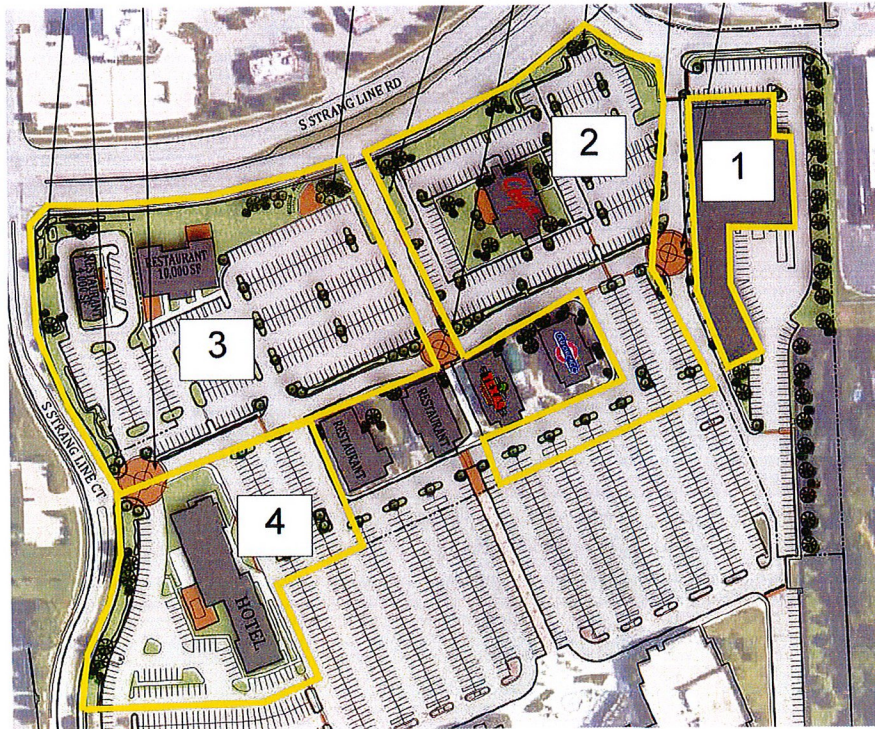
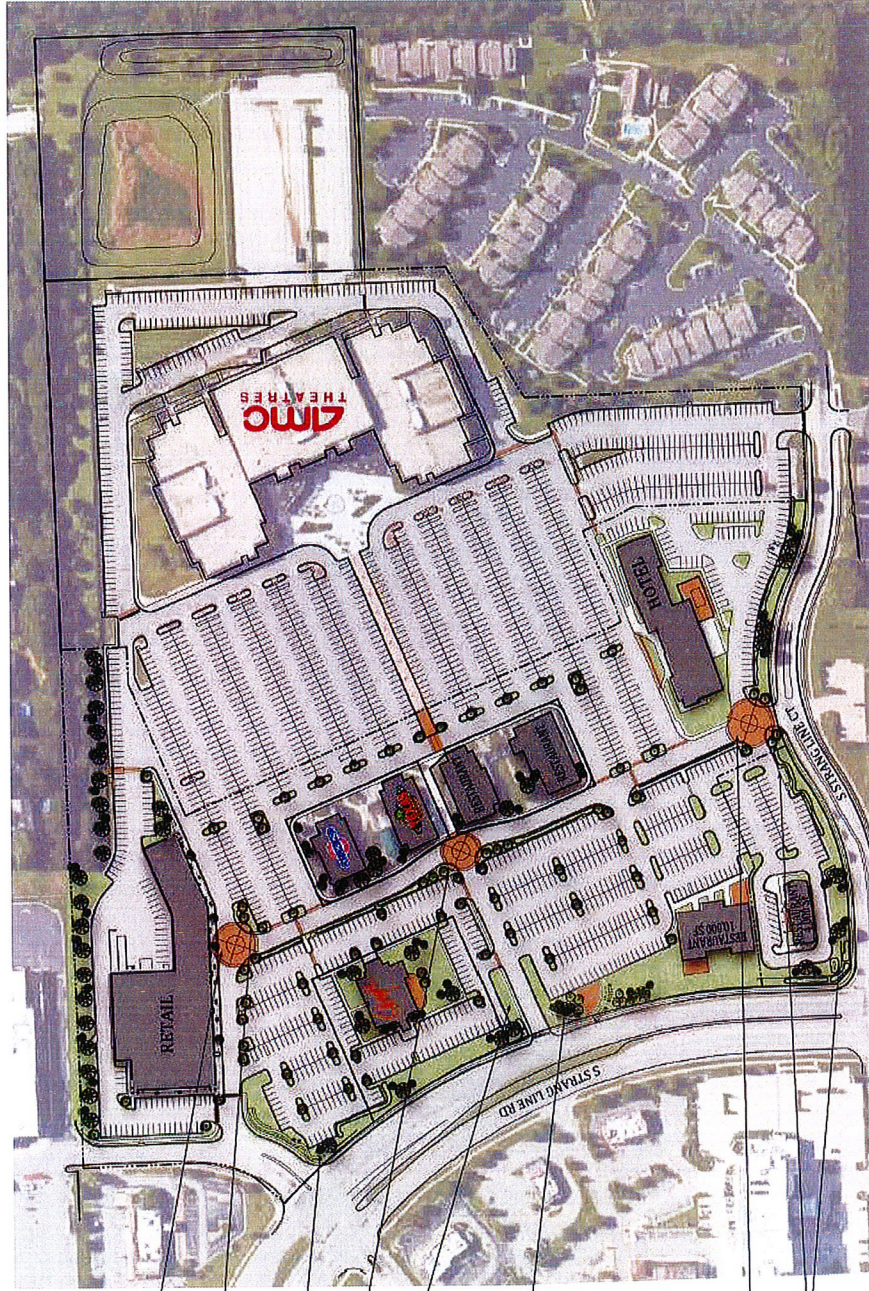


EXHIBIT F

PRELIMINARY SITE PLAN



COLORED / PATTERN
STAMPED CONCRETE
INTERSECTIONS, TYR

DIRECTIONAL SIGNAGE

ENTRANCE MONUMENT
SIGN FEATURE
& SEATING SPACE W/
TRELLIS

BENCH AREA

MAIN PEDESTRIAN
CORRIDOR

SEATING / SCULPTURE
NODE

COLORED / PATTERN
STAMPED CONCRETE
INTERSECTIONS, TYR

SEATING / SCULPTURE
NODE



RH. JOHNSON

COLORED SITE PLAN

OLATHE STATION

OLATHE, KS

PH1015.001 - 05 JUN 2017

EXHIBIT G

MAINTENANCE PLAN

Developer will carefully maintain (or cause to be maintained) the Property and all structures, buildings, appurtenances, screening fences, parking areas and drives, pylon and entry signs, landscaping and other improvements of whatever nature thereon in a safe, clean and orderly manner, in condition and repair consistent with other similarly situated shopping centers in the City, and all at times in accordance with the City's Unified Development Ordinance, and other Applicable Laws and Requirements, including, but not limited to, the implementation of the maintenance procedures set forth below. Developer's maintenance of the Property will include, without limitation, that:

1. Developer will engage a third-party property management company (the "Property Manager") to oversee the management of the Property. The Property Manager will be a reputable property management company qualified to implement the maintenance obligations described herein in a diligent and timely manner;
2. Once installed, all landscaping on the Property will be maintained in a neat and adequate manner, including, without limitation, mowing, trimming of bushes and trees, replacement of dead bushes and trees, watering as needed, and other similar maintenance and upkeep;
3. All parking areas, curbs, and drives and access on the Property will be paved with an impervious surface equal to asphalt or concrete and maintained in a sightly and well-kept condition at all times, free from excessive potholes. Each parking space provided will be designated by striping painted on the paved surfaces and will be adequate in size in accordance with the Unified Development Ordinance, and such striping will be reasonably up-kept and repainted as needed;
4. All façade improvements on the Property will be maintained in a sightly and well-kept condition at all times, including repair and replacement as deemed necessary by Developer (in its reasonable discretion) in accordance with the repair and replacement provisions set forth below;
5. All lighting and pylon- and entry-signage on the Property will be maintained in a sightly and well-kept condition at all times, including repair and replacement of the same as necessary to keep the Property well-lit in accordance with the Unified Development Ordinance and the repair and replacement provisions set forth below;
6. During the CID Term, Developer will cause the Project to be maintained, preserved and kept in good repair and working order in a safe condition, consistent at all times with other similarly situated shopping centers in the City and the maintenance procedures set forth herein; and
7. Developer will make all repairs renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations upon the

Property; provided, however, that, with respect to replacements in particular, Developer will exercise its reasonable judgment as to whether any given improvement(s) may be repaired in such manner as to so maintain, preserve and keep such improvement(s) in good repair and working order in a safe condition, and will only be required to replace such improvement(s) following the expiration of their useful life at such time as they can no longer be repaired, in Developer's reasonable discretion, in such manner as to maintain, preserve and keep the same in good repair and working order in a safe condition. Notwithstanding the foregoing or anything in this Agreement to the contrary, nothing herein will preclude Developer from removing or demolishing any building(s) or improvement(s) if, in its reasonable judgment, such removal or demolition is desirable in the conduct of its business.