



SPECIAL CITY COUNCIL MEETING AGENDA
Monday, July 17, 2023 at 5:30 p.m.

**Mission City Hall
6090 Woodson
Mission, KS 66202**

This meeting will be held in person at the time and date shown above. In consideration of the COVID-19 social distancing recommendations, this meeting will also be available virtually via Zoom (<https://zoom.us/join>). Information will be posted, prior to the meeting, on how to join at <https://www.missionks.org/calendar.aspx>.

If you require any accommodations (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-676-8350 no later than 24 hours prior to the beginning of the meeting.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ROLL CALL

1. Resolution of the City of Mission, Kansas, Terminating the Redevelopment Agreement for the Mission Gateway Project – Laura Smith

ADJOURNMENT

**CITY OF MISSION
RESOLUTION NO. _____**

**A RESOLUTION OF THE CITY OF MISSION, KANSAS, TERMINATING THE
REDEVELOPMENT AGREEMENT FOR THE MISSION GATEWAY PROJECT.**

WHEREAS, the City of Mission, Kansas (“City”) and Aryeh Realty, LLC (“Developer”) entered into that certain “Redevelopment Agreement for the Mission Gateway Project”, dated as of January 20, 2023 (“Agreement”); and

WHEREAS, default under the Agreement was declared by the City on May 15, 2023 and the City provided to Developer sixty (60) days to cure said default, as required by the Agreement; and

WHEREAS, the Developer failed to timely cure the declared default; and

WHEREAS, Section 9.02 (B) of the Agreement provides that upon an uncured default by the Developer, the City may terminate the Agreement; and

WHEREAS, on July 17, 2023 at a duly-called special City Council meeting and by a majority vote of the City Council, a motion was approved to terminate the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
CITY OF MISSION, KANSAS, AS FOLLOWS:**

1. That the “Redevelopment Agreement for the Mission Gateway Project”, dated as of January 20, 2023 is hereby terminated.

THIS RESOLUTION IS ADOPTED by the Governing Body of the City of Mission, Kansas, this 17 day of July, 2023.

CITY OF MISSION, KANSAS

Solana Flora, Mayor

ATTEST:

Robyn L. Fulks, City Clerk

APPROVED AS TO FORM ONLY:

David K. Martin, City Attorney

LEWIS A. HEAVEN, JR.
DIRECT DIAL: 913.327.5166
pheaven@spencerfane.com

File No. 5027985.02

May 15, 2023

VIA REGISTERED MAIL

RETURN RECEIPT REQUESTED

Aryeh Realty, LLC
50 Broadway
New York, New York 10004
Attn: Allen Gross

**Re: Notice of Default, Demand and Notice to Cure
Redevelopment Agreement for the Mission Gateway Project
January 20, 2023**

Ladies and Gentlemen:

Our office represents the City of Mission, Kansas. Reference is made to that certain Redevelopment Agreement for the Mission Gateway Project, dated January 20, 2023, by and between the City of Mission, Kansas and Aryeh Realty, LLC ("Agreement"). Capitalized terms used in this letter shall have the meanings ascribed to them in the Agreement.

Under Section 5.01 of the Agreement, you agreed to pay real estate taxes and assessments for the Property on or before the due date of such taxes and assessments. We have learned that the second half of the real estate taxes and assessments for the tax year 2022 were not paid by their due date, and remain unpaid.

You are hereby notified that your failure to pay the real estate taxes and assessments is an Event of Default under Section 9.01 of the Agreement, and you are hereby afforded sixty (60) days from receipt of this notice to cure said default.

Please be advised that if within sixty (60) days after receipt of this notice the aforesaid real estate taxes and assessments are not paid to Johnson County, Kansas, City shall declare



May 15, 2023
Page 2

your company in default under the Agreement. Please refer to Section 9.02 of the Agreement for a description of the City's rights upon default, all of which City hereby reserves.

Please be further advised that nothing set forth in this notice is intended to create or constitute a waiver, modification, relinquishment, or forbearance by City of any of City's rights or remedies under the Agreement or at law or in equity, including, without limitation, any and all rights or remedies in connection with any other defaults or Events of Default that may now or hereafter exist under the Agreement, all of which rights and remedies are expressly reserved. Neither delay by, nor failure of, City to exercise any rights, power or privilege under the Agreement will operate as a waiver thereof, and no single or partial exercise of any right, power or privilege will preclude any other further exercise thereof, or the exercise of any other right, power or privilege.

Please feel free to contact me if you have any questions regarding this matter.

Very truly yours,

SPENCER FANE LLP

A handwritten signature in blue ink, appearing to read "Lewis A. Heaven, Jr.", written over the typed name.

Lewis A. Heaven, Jr.

cc: City of Mission (By Electronic Mail)
Korb W. Maxwell (By Registered Mail)

**REDEVELOPMENT AGREEMENT
FOR THE
MISSION GATEWAY PROJECT**

TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION2

Section 1.01. Definitions of Words and Terms..... 2

Section 1.02. Rules of Construction..... 5

ARTICLE II CONSTRUCTION OF PROJECT6

Section 2.01. Authorization to Construct..... 6

Section 2.02. Development Schedule..... 6

Section 2.03. Project Budget..... 7

Section 2.04. Construction Obligations 8

Section 2.05. Plan Approval; Additional Redevelopment District Development Approval 9

 Section 2.06. Insurance 9

Section 2.07. Affordable Housing Requirements 9

Section 2.08. Sustainability Requirements 10

Section 2.09. Building, Subdivision Codes; Architect’s Report..... 11

Section 2.10. Zoning Approvals and Project Plan 11

 Section 2.11. Delay 11

Section 2.12. Modifications 11

Section 2.13. Utilities and Fees..... 11

Section 2.14. Assistance to Developer..... 11

Section 2.15. Modification of City Municipal Code Provisions Pertaining to Drinking
 Establishments 10

ARTICLE III PROJECT FINANCING.....12

Section 3.01. Initial Capital..... 12

Section 3.02. TIF Funding of Approved Eligible Project Costs 12

Section 3.03. CID Funding of Approved Eligible Project Costs 13

Section 3.04. Bond Issuance; Conditions of Disbursement of Net Bond Proceeds 14

Section 3.05. Certification of Expenditure..... 16

Section 3.06. Procedures for Certification of Expenditures..... 16

Section 3.07. Right to Inspect 17

Section 3.08. Certificates of Completion 17

Section 3.09. Pay As You Go Reimbursement 17

Section 3.10. Limitation on Reimbursement from Net Bond Proceeds..... 18

Section 3.11. Interim Construction Financing – Issuance of Industrial Revenue Bonds
 (IRB) – Sales Tax Exemption for Construction Materials..... 18

Section 3.12. City Consideration of Future Financing or Zoning Applications 19

Section 3.13. Failure to Approve Project Plan and/or IRB Financing 19

Section 3.14. Drainage and Benefit District..... 19

ARTICLE IV DEVELOPER OF RECORD20

Section 4.01. Developer Designation..... 20

ARTICLE V REAL ESTATE TAXES20

Section 5.01. Intent to Pay Taxes..... 20

Section 5.02. Notice of Protest..... 20

ARTICLE VI OTHER DEVELOPER COVENANTS20

Section 6.01.	Maintenance and Repair.....	20
Section 6.02.	Local, State, and Federal Laws	21
ARTICLE VII ASSIGNMENT, SALES, LEASING, AND MANAGEMENT		21
Section 7.01.	Sale or Disposition of Property Within Redevelopment District.....	21
Section 7.02.	Partial Assignment of Reimbursement Rights	22
Section 7.03.	Related Entity.....	23
ARTICLE VIII AUTHORITY		23
Section 8.01.	Actions	23
Section 8.02.	Powers	23
Section 8.03.	Authorized Parties.....	24
Section 8.04.	Representations of the Developer	24
ARTICLE IX EVENTS OF DEFAULT		26
Section 9.01.	Events of Default.....	26
Section 9.02.	Remedies on Developer’s Default	27
Section 9.03.	Remedies on City Default	28
ARTICLE X GENERAL PROVISIONS		28
Section 10.01.	City Responsibility.....	28
Section 10.02.	City Expenses.....	28
Section 10.03.	Limited Obligations	29
Section 10.04.	Time of Essence	29
Section 10.05.	Amendment.....	29
Section 10.06.	Liens.....	29
Section 10.07.	Indemnity and Release	30
Section 10.08.	Immunity of Officers, Employees, and Members of the City.....	30
Section 10.09.	No Other Agreement	30
Section 10.10.	Assigns and Transfers	30
Section 10.11.	Severability	31
Section 10.12.	Kansas Law	31
Section 10.13.	Notice	31
Section 10.14.	Counterparts	32
Section 10.15.	Recordation of Agreement.....	32
Section 10.16.	Consent or Approval	32
Section 10.17.	Notice of Developer Default to Lender; Lender Right to Cure; Modifications 32	
Section 10.18.	Term of Agreement.....	35

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of the 20th day of January, 2023, by and between the **CITY OF MISSION, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (“**City**”) and **ARYEH REALTY, LLC**, limited liability company (“**Developer**”).

RECITALS

A. The City has the authority to adopt tax increment financing (“**TIF**”) pursuant to sections K.S.A. 12-1770 *et seq.*, as amended (the “**TIF Act**”).

B. Pursuant to the TIF Act, the City held a public hearing on January 11, 2006 to consider establishing a Redevelopment District on approximately 17 acres generally bounded by Johnson Drive on the North, Roe Avenue on the East, Shawnee Mission Parkway on the South and Roeland Drive on the West in Mission, Johnson County, Kansas (the “**Original Redevelopment District**”).

C. On January 11, 2006, the City adopted Ordinance 1190, establishing a redevelopment district and designating redevelopment project areas for the Original Redevelopment District on the bases described therein.

D. On February 8, 2006, the City adopted Ordinance 1195, amending and restating Ordinance 1190 on the bases described therein.

E. On November 18, 2019, the City passed Ordinance No. 1508 dividing the Original Redevelopment District into five separate redevelopment districts pursuant to K.S.A. 12-1771(h), one of such resulting redevelopment districts being Rock Creek Redevelopment District No. 1 (Gateway) (the “**Redevelopment District**”), the boundaries of which are coterminous with the project area to which the Project Plan (defined below) applies.

F. On or about June 1, 2022, the Developer filed for approval by the City, a certain Fifth Amended Redevelopment Project Plan, which Plan (“**Project Plan**”) will be considered by the Governing Body of the City after public notice and hearing, for the redevelopment of the only project area within the Redevelopment District, as legally described on **Exhibit A** attached hereto (the “**Property**”) and redevelopment of the Property as a mixed-use project consisting of retail, commercial and residential uses.

G. The Project Plan includes a description of the buildings and areas to be constructed, studies the feasibility of the Project, describes the financing mechanisms to be utilized for private and public costs of the Project, and addresses all other components required by the TIF Act and the City’s TIF policy.

H. It is the Developer’s intent to finance construction of the Project’s private improvements through a combination of TIF, Community Improvement District (“**CID**”) financing, and the issuance of Industrial Revenue Bonds (“**IRBs**”), as well as private debt and equity contributions, subject to City approvals and in accordance with applicable law and this Agreement.

I. The City has the authority to approve utilization of CID financing pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the “**CID Act**”).

J. The City has the authority to approve utilization of IRB financing pursuant to K.S.A. 12-1470 *et seq.*, as amended (the “**IRB Act**”).

K. The City and Developer now desire to enter into this Agreement to address issues regarding implementation of the Project Plan.

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

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms

In addition to words and terms defined elsewhere in this Agreement, the following capitalized words and terms as used in this Agreement shall have the following meanings:

“**Affected Area**” shall have the meaning set forth in **Section 2.04**.

“**Approved Eligible Project Costs**” means TIF Eligible Project Costs and CID Eligible Project Costs.

“**Assessment District**” shall have the meaning set forth in **Section 3.14**.

“**Bond Documents**” means the documents and proceedings governing the issuance of the TIF Bonds and/or IRBs as approved by bond counsel for the City.

“**Captured Real Estate Taxes**” means the incremental ad valorem property tax revenue captured under K.S.A. 12-1774(a)(1)(A) within the Property. The term Captured Real Estate Taxes shall not include any taxes or assessments imposed by any drainage district.

“**Captured Sales Taxes**” means 55% of the City’s 1% general sales tax captured under K.S.A. 12-1774(a)(1)(D) within the Property, however excluding any special or additional City sales taxes.

“**Captured Taxes**” means Captured Real Estate Taxes and Captured Sales Taxes collectively.

“**CID**” means one or more community improvement districts created by the City for the Property pursuant to the CID Act.

“CID Eligible Project Costs” means any “cost” as defined in the CID Act to be paid with revenues of the CID Sales Tax as identified in the Project Budget which have been or will be (i) incurred by the Developer pursuant to this Agreement, and (ii) subject to approval by the City for reimbursement pursuant to this Agreement. For the purposes of this Agreement, any interest or private financing costs incurred by the Developer to finance CID Eligible Project Costs, to the extent allowable under the CID Act, shall be reimbursable in the same manner as other CID Eligible Project Costs.

“CID Sales Tax” means any additional sales tax levied within any CID created for the Property pursuant to the CID Act.

“CID Term” shall have the meaning set forth in **Section 3.03 (A)**.

“City” means the City of Mission, Kansas.

“City CID District Expenses” shall have the meaning set forth in **Section 10.02**.

“City Expenses” means all reasonable documented, out-of-pocket expenses incurred in connection with the Property, the Project Plan, this Agreement, and the issuance of the TIF Bonds and IRBs, including attorney’s fees, postage, mileage, copying costs, recording costs and similar expenses.

“City Project Work” means the Stormwater Improvements.

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

“City TIF District Expenses” shall have the meaning set forth in **Section 10.02**.

“Completion Date” means the date for completion of the Project set forth on the Development Schedule.

“Consent” means a written document evidencing agreement or concurrence with the performance of an act.

“Developer” means Aryeh Realty, LLC and its successors and permitted assigns.

“Developer Equity” shall have the meaning set forth in **Section 3.01**.

“Developer Financing” means the nonpublic financing of a portion of the costs of the Project by the Developer from Developer Equity and/or conventional loans.

“Developer Project Work” has the meaning set forth in **Section 2.04(B)**.

“Developer Representative” means Allen Gross, and such other person or persons at the time designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Developer.

“Development Schedule” means the development schedule referred to in **Section 2.02**.

“Drainage District” shall have the meaning set forth in **Section 3.14**.

“Eligible Public Costs” means the City TIF District Expenses, the City CID District Expenses, and such other costs to be incurred by the City upon agreement of the City and Developer.

“Event of Default” means any event or occurrence as defined in **Article IX** of this Agreement.

“Fee Mortgagee” shall have the meaning set forth in **Section 10.17**.

“Incentive Funding” shall have the meaning set forth in **Section 2.03**.

“Master Funding Agreement” means an agreement by and among the Developer, the City, Developer’s lender(s), and the trustee acting in connection with the TIF Bonds to be issued under this Agreement, whereby said escrow agent receives funds for payment of Project costs and disburses same in accordance with this Agreement.

“Net Bond Proceeds” means the proceeds from the sale of the TIF Bonds available to be deposited with the bond trustee in accordance with the Bond Documents, the value of which shall be calculated excluding issuance costs, capitalized interest, and debt service reserve funds.

“Pay-As-You-Go Reimbursement” means the reimbursement of Approved Eligible Project Costs with Captured Taxes, the CID Sales Tax, or the TGT from time to time as such expenses are incurred and documented as provided in **Section 3.09** herein and in accordance with the TIF and/or CID Act.

“Project” or **“Project Work”** means the improvements described in the Project Plan and Zoning Approvals.

“Project Budget” means the project budget attached hereto as **Exhibit B**, as amended from time to time in accordance with this Agreement.

“Project Plan” has the meaning set forth in the Recitals to this Agreement.

“Related Entity” means any entity in which the ownership or membership of such entity is controlled by Developer or the majority owners or members of the Developer.

“Site Plan” means such Preliminary Development Plans and such Final Development Plans as may be approved from time to time by the City for the Property on file with the City of Mission Community Development Department.

“Stormwater Improvements” means improvements previously undertaken by the City at a cost of approximately Twelve Million Dollars (\$12,000,000) for the remediation of stormwater drainage issues affecting the Property.

“**TGT**” means the City’s Transient Guest Tax generated on the Property. For purposes of this Agreement, TGT shall mean Transient Guest Tax of not more than the lesser of the Transient Guest Tax of the City or 8%.

“**TIF Bonds**” means the bonds issued by the City pursuant to the TIF Act and in accordance with this Agreement, payable from the Captured Taxes and the CID Sales Tax and, if TIF Bonds are approved for Phase 2, also TGT.

“**TIF Cap**” means the sum of Captured Real Estate Taxes and Captured Sales Taxes, in the amount not to exceed the amount of TIF Eligible Project Costs as set forth on **Exhibit B**, whether paid from Net Bond Proceeds or Pay-As-You-Go Reimbursement.

“**TIF Eligible Project Costs**” means “redevelopment project costs” as defined in the TIF Act in the categories set forth in the approved Project Plan limited to the amounts set forth on **Exhibit B** of this Agreement, which have been or will be (i) incurred by the Developer pursuant to this Agreement, and (ii) subject to approval by the City for reimbursement pursuant to this Agreement with the revenues of Captured Taxes; plus interest and private financing costs at the actual cost of borrowing. For the purposes of this Agreement, any interest or private financing costs incurred by the Developer to finance TIF Eligible Project Costs shall be reimbursable in the same manner as other TIF Eligible Project Costs.

“**TIF Fund**” shall have the meaning set forth in **Section 3.02**.

“**TIF Term**” shall have the meaning set forth in **Section 3.02**.

“**Zoning Approvals**” means the approvals previously granted and associated preliminary development plan approvals, as may be revised and approved, and such final plan approvals as may be approved by the City from time to time.

Section 1.02. Rules of Construction

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

- A. The terms defined in this 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.

ARTICLE II

CONSTRUCTION OF PROJECT

Section 2.01. Authorization to Construct

In order to further the development of the Project, the City hereby authorizes the Developer to develop the Project pursuant to this Agreement. Nothing contained herein shall be construed as creating a partnership or other entity between the Developer and the City, or ensuring zoning, planning, permit or other approvals by the City.

Section 2.02. Development Schedule

The Project is contemplated to be developed in two (2) phases:

Phase 1: The first phase of the Project is proposed to include: (i) construction of approximately 49,752 square feet of “small-shop” commercial or restaurant uses; (ii) construction of approximately 90,000 square feet of retail, restaurant, and entertainment space (referred to herein as “**Cinergy**”); (iii) construction of approximately 373 apartment units (the “**Apartments**”); (iv) construction of related site work; (v) construction of surface parking sufficient for such uses pursuant to the City’s applicable ordinances; and (vi) construction of a parking garage serving the entirety of the Project (the “**Garage**,” and collectively referred to herein as “**Phase 1**”).

Phase 2: The second Phase of the Project is proposed to include: (i) construction of an approximately 202-room hotel (the “**Hotel**”) and (ii) construction of an approximately 100,000 square foot office or medical facility (the “**Office**,” and collectively with Hotel, “**Phase 2**”).

Subject to **Section 2.11**, the Developer shall commence Phase 1 development activities no later than 4 months after the issuance of TIF Bonds, continuously prosecute and substantially complete same no later than the dates set forth on Exhibit B-1, pursuant to the Development Schedule attached hereto as **Exhibit B-1** (the “**Development Schedule**”). Construction of Phase 2 may occur at the discretion of the Developer and Developer shall be eligible to submit Phase 2 costs for Pay-As-You-Go Reimbursement, provided that the Developer hereby acknowledges that the availability of TIF Bonds secured by Captured Taxes, CID Sales Tax, and TGT for reimbursement of eligible costs related to Phase 2 components will be subject to the conditions precedent set forth in Section 3.04(C) hereof and to then-constituted City Council conditions, consideration and approval. If Developer does not commence and complete construction of Phase 2 in accordance with the Development Schedule and as otherwise set forth in this Agreement, then Developer shall not be eligible for reimbursement from TIF Bonds or from Pay-As-You-Go Reimbursement for costs related to Phase 2 components, but such failure to commence shall not be deemed a default as to Developer’s right to receive reimbursement from TIF Bonds for costs

related to Phase 1 components, provided that Phase 1 is constructed and completed in accordance with this Agreement. Anything to the contrary in this Agreement notwithstanding, if TIF Bonds are issued, the Developer shall not receive any Pay-As-You-Go Reimbursement unless and until all such TIF Bonds have been repaid in full.

The schedule for the development of the Project is more fully described in **Exhibit B-1** attached hereto (the “**Development Schedule**”). The parties recognize and agree that the Development Schedule is an estimated schedule, subject to change based on extraordinary market and other conditions beyond the control of the Developer; provided, however, that the availability of the Developer Financing shall not excuse performance of the Development Schedule. For purposes hereof, the Developer shall be deemed to have commenced development activities or construction on Phase 1 once Developer directs its general contractor to begin material and continuous construction activities on any of the components of the Project Plan and notifies the City in writing the date of such direction, and on a respective Phase 2 Project component upon the pouring of footings for the respective Hotel or Office component. The Development Schedule is subject to further change and/or modification, provided that any substantial change will require the written approval of the City and the Developer, which approval will not be unreasonably withheld or delayed. Anything to the contrary in this Agreement notwithstanding, the Developer shall complete Phase 1 of the Project as set forth on the Development Schedule, unless such date is extended in writing by the City. The approval of the City as required in this Section may be given by the Mayor or his/her designee (for thirty (30) days or less) or the Governing Body of the City (for thirty-one (31) days or more). The Developer will report in writing at least quarterly to the Mayor or the City’s designated consultant on the progress of construction.

Section 2.03. Project Budget

Attached as **Exhibit B** is the Project Budget setting forth in detail the total cost of the Project, including TIF Eligible Project Costs and CID Eligible Project Costs. The Project Budget is subject to further change and/or modification based on extraordinary market or other conditions (beyond the reasonable control of Developer) with the written approval of Developer and the City, which approval will not be unreasonably withheld or delayed. Provided, however, that no such change or modification shall increase the obligations of the City herein without the consent of the City, which consent may be withheld in its sole discretion.

Without the prior written consent of City, total reimbursements of potential Approved Eligible Project Costs will not exceed 115% of the total amount specified in the Project Budget for budget category (excluding line items for contingencies).

Anything in this Agreement to the contrary notwithstanding, the maximum amount of Project Costs to be paid or reimbursed to Developer under this Agreement shall be the sum of the Phase 1 Net Bond Proceeds and Pay-As-You-Go Reimbursement for Phase 1 and Phase 2, subject to the terms of this Agreement (the “**Incentive Funding**”). It is acknowledged by Developer that the City’s willingness to provide the full Incentive Funding is predicated on timely completion of Phase 1 of the Project.

Section 2.04. Construction Obligations

The Developer shall cause its construction obligations relating to the Project (as set forth below) to be completed at Developer’s expense (such expenses, to the extent they constitute Approved Eligible Project Costs, to be reimbursed, as applicable and to the extent provided in this Agreement, from the Net Bond Proceeds and/or from Pay-As-You-Go Reimbursement) in accordance with the provisions of this Agreement. Developer’s responsibilities under this Agreement are to cause its obligations to be performed; it is not required that the Developer be the person performing such obligations, but only that the Developer causes the obligations to be performed.

A. Completed City Project Work. The parties agree that the Stormwater Improvements have been completed by the City. The parties acknowledge that a small portion of the Property (“**Affected Area**”) is within the area designated by the Federal Emergency Management Agency (FEMA) maps as the 100-year flood plain, and the Site Plan provides for improvements to remove the Affected Area from such flood plain. The City, as flood plan administrator, agrees to allow the issuance of building permits for the Project and take such steps as may be reasonably necessary to cause the FEMA maps to be revised to remove the Affected Area from the flood plain after the Site Plan improvements are made and the Affected Area is removed from the flood plain.

B. Developer’s Project Work. It is acknowledged by Developer that it owns or controls the Property. The Developer shall be responsible for causing the following construction work or other development related activity (“**Developer Project Work**”) to be completed:

1. Construct all improvements in Phase 1 of the Project in accordance with the Project Plan and Zoning Approvals.
2. Developer represents that Developer shall retain a qualified construction manager after a competitive selection process and that such construction manager contractor will competitively bid the construction work for the Project, to the extent practicable. Developer shall provide to City reasonable documentation of such competitive bid procedure.

Developer acknowledges and agrees that receipt by the Developer of the Incentive Funding and benefits under the TIF Act, the CID Act and IRB Act is conditioned upon the timely completion by the Developer of the Developer Project Work in accordance with this Agreement.

Section 2.05. Plan Approval; Additional Redevelopment District Development Approval

Developer agrees to diligently pursue approval of the Project Site Plans and Zoning Approvals. Once approved, to the extent the Developer elects to modify the same, Developer shall submit to the City and the City shall review the Site Plans relating to the Project and the related site work, which plans shall be submitted in accordance with the City’s generally accepted requirements for the consideration of such plans and must satisfy the requirements set forth in the Zoning Approvals. The City shall diligently review said Site Plans and construction plans to

determine if such plans satisfy the Zoning Approvals and building codes and approve same, or provide a written description detailing any portion of the plans which the City has determined to be unacceptable.

Section 2.06. Insurance

The Developer shall provide and maintain the insurance coverage described in **Exhibit D** relating to the Developer’s Project Work and the Property. Developer shall provide to the City verification of coverage as provided in **Exhibit D**.

Section 2.07. Affordable Housing Requirements

A. So long as the TIF Bonds are issued and proceeds distributed, for the twenty (20) years from and after Phase 1 of the Project is completed and is accepting residential tenants (“**Compliance Period**”), Developer shall reserve no less than ten percent (10%) of apartment units for lessees with incomes at or below sixty percent (60%) of Kansas City Area Median Income (“**AMI**”) at rental rates no greater than the maximum affordable rental rates published annually by the U.S. Department of Housing and Urban Development. The affordable apartment unit (“**Affordable Unit**”) mix shall include no less than 18 one-bedroom apartments, 6 two-bedroom apartments and 2 three-bedroom apartments, in addition to studio apartment units. Developer will be allowed to increase rental rates for the Affordable Units by the greater of the annual increase in the foregoing published affordable rental rates or two percent (2%) annually. Developer shall honor the terms of tenancies in effect at the time of the expiration of the Compliance Period. For avoidance of doubt, if at the time of the expiration of the Compliance Period, there are two years remaining on a lease of an Affordable Unit, Developer shall continue to observe the requirements of this Section 2.07 for the balance of the lease term. In the event during the term of a lease the income of the household member(s) of an Affordable Unit exceeds 60% of the AMI, Developer may continue to honor the lease, however if 2 or more years remain in the lease term, the unit will no longer be considered an Affordable Unit.

B. Affordable Units must be located proportionally throughout all floors of all buildings compared to market rate units. Affordable Units must be indistinguishable from market rate units and shall be architecturally equivalent; interior layouts, designs, materials and finishes must be functionally equivalent, however do not have to be identical. Affordable Units must share the same entrances, common areas and amenities as market rate units.

C. Developer shall obtain from each household prior to initial occupancy of each Affordable Unit, and on every anniversary thereafter, a written certificate (“**Affordable Unit Certificate**”) containing at least all the following, in such format and with such supporting documentation, as City and Developer may reasonably require:

1. The identity of each household member;
2. The number of household members; and

3. The total gross household income (i.e., inclusive of all adult household members' individual income) along with reasonable evidence of same, such as recent pay stubs.

Developer shall retain such certificates for not less than three (3) years, and upon City's request, shall provide copies of such certificates to City. Developer shall be allowed to conclusively rely on the information provided to it in an Affordable Unit Certificate.

D. By not later than May 1 of each year during the term of this Agreement, Developer shall submit an annual report to the City ("**Annual Report**") for the prior calendar year or portion of any prior calendar year that the Affordable Units start or cease being required under the terms of this Agreement with a certification that the Project complies with this Agreement. The Annual Report shall, at a minimum, include the following information for each Affordable Unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; and (vi) total gross household income of all residents living in the unit.

E. The provisions of this Section shall survive termination or expiration of this Agreement.

Section 2.08. Sustainability Requirements

Developer shall cause all components of the Project (except Apartments and Garage) to obtain and maintain at least a "One Globe" certification issued by the Green Building Initiative ("**GBI**") Green Globe rating system, or if such certification or rating system shall be discontinued, a reasonably equivalent certification reasonably designated by City and reasonably approved by Developer. Developer shall cause such Project components to maintain throughout the term of this Agreement at least a One Globe certification for operations and management of the Project, or if such certification or rating system shall be discontinued, then an equivalent certification reasonably designated by City and reasonably approved by Developer. Said initial certification shall be obtained within twenty-four (24) months of completion of Phase 1 of the Project. Proof of One Globe certification shall be provided to City upon receipt by Developer. Developer shall cause the Apartments to obtain Bronze level certification of the National Green Building Standard, or if such certification or rating system shall be discontinued, a reasonably equivalent certification reasonably designated by City and reasonably approved by Developer.

Section 2.09. Building, Subdivision Codes; Architect's Report

The Developer acknowledges that the contemplated uses and occupancies of the Project shall comply with all federal, state and City building codes (2012 ICC Code), subdivision, zoning, environmental and other developmental regulations and that the Project shall be constructed in compliance with all such codes and regulations. The Property is zoned as a Mixed-Use District (MXD). The adopted Development Policy and Design Guidelines for commercial and residential buildings shall be followed on the Property, and requirements as a result of any SUP/Plat/Rezoning/Plan Review shall be adhered to.

Section 2.10. Zoning Approvals and Project Plan

The Developer shall complete the development in accordance with the Zoning Approvals, subject to the requirements of the City’s zoning ordinances, federal law and the laws of the State of Kansas, from time to time amended, this Agreement and the Project Plan, as it may be modified or revised from time to time with approval of the parties. The Developer shall use good faith efforts to develop the Project expeditiously and in accordance with the projections set forth in the Project Budget and Development Schedule (as each of same may be modified as provided herein).

Section 2.11. Delay

For the purposes of any of the provisions of this Agreement, neither the City nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage, a global financial crisis that results in the lack of continued disbursement from a lender on a closed loan not caused by a Developer default, destruction by fire or other casualty, strike, nationwide shortages of material, global pandemic or disease (provided, for any presently existing pandemic or disease, only a material worsening of such pandemic or disease shall be cause for excusable delay under this Section), unusually adverse weather condition such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration or tornadoes and other events or conditions beyond the reasonable control of the party affected which, in fact, interferes with the ability of such party to discharge its respective obligations hereunder or during any delay thereafter.

Section 2.12. Modifications

The construction of the development may be modified or revised by the Developer, with the City’s and Developer’s approval, to provide for other improvements consistent with the Project Plan and the requirements set forth in the Zoning Approvals.

Section 2.13. Utilities and Fees

The City hereby agrees that the Developer shall have the right to connect to any and all water lines, sanitary and storm sewer lines over which the City has control and City-owned utility lines constructed in the vicinity of Property subject to compliance with the City’s codes and procedures for such connections.

Section 2.14. Assistance to Developer

The City agrees to use reasonable efforts, without cost to the City, in assisting the Developer, its agents, contractors and subcontractors, with respect to obtaining building permits from the City, and any permits or approvals required from any governmental agency, whenever reasonably requested to do so.

Section 2.15. Modification of City Municipal Code Provisions Pertaining to Drinking Establishments

To the extent permitted under State law, the City agrees to consider in good faith modifying Municipal Code Section 600.020 (A), or other applicable Municipal Code Sections, such that the Project Area shall be exempt from the prohibition against the sale or serving of alcoholic liquor or cereal malt beverage by a person holding a license or permit from the City whose place of business or other premises are located within two hundred (200) feet of any public or parochial school, college, or library.

ARTICLE III

PROJECT FINANCING

Section 3.01. Initial Capital

The Developer intends to finance a portion of the costs of the Project from Developer Financing. Prior to the issuance of any bonds for the Project, the Developer will deliver to the City signed commitment letters to finance, or other evidence of commitment to finance reasonably acceptable to the City, the Developer Project Work up to the amount of the Phase 1 of the Project's private improvements' costs, less the Incentive Funding for Phase 1, and less any equity contributions made or represented to be made by the Developer ("**Developer Equity**"). Developer shall demonstrate the existence of the Developer Equity to the reasonable satisfaction of the City. The commitment letters or other evidence of commitment to finance shall be in form and content reasonably satisfactory to City by a lender or group of lenders subject to normal and customary disbursement requirements. Prior to or simultaneously with the closing of the TIF Bonds, the Developer Financing loan shall be closed and funded to the satisfaction of the City. The Developer represents and warrants to the City, based on Developers present knowledge and belief, that the Developer Financing and Developer Equity, along with the Incentive Funding, will enable the Developer to timely implement and complete the Developer Project Work as required in this Agreement. The Developer shall immediately notify the City of any material changes in the Developer Financing and/or Developer Equity that occur after the execution of this Agreement.

Section 3.02. TIF Funding of Approved Eligible Project Costs

The Developer and the City agree to the reimbursement of Approved Eligible Project Costs incurred by or for the Developer (subject to the limitations otherwise set forth in this Agreement) to the extent possible from the Net Bond Proceeds, and, to the extent any such costs are unpaid by the Net Bond Proceeds or Net Bond Proceeds are not available at the time reimbursement of Approved Eligible Project Costs is requested, from Pay-As-You-Go Reimbursement in accordance with this Agreement. Reimbursement shall be made in accordance with the priority set forth in this Agreement. Nothing herein contained shall obligate the City to issue additional bonds or incur debt or expense in the event the Net Bond Proceeds are insufficient to pay or reimburse all Approved Eligible Project Costs.

A. TIF Term. The term of the Project Plan shall be for a term ending on the earlier of (i) the payment of all TIF Eligible Project Costs or (ii) the twentieth anniversary of the effective date of the Project Plan ("**TIF Term**"), unless the City takes the appropriate actions required by law to terminate or amend the term. Except as provided in **Section 9.02**, the City shall not, without the consent of Developer, terminate that portion

of the Redevelopment District designated for the Property or reduce the TIF Term prior to such time as the Developer has been reimbursed for all TIF Eligible Project Costs incurred or to be incurred by Developer as part of the Project; provided, however, that if all aspects of the Project are completed, the City may then terminate that portion of the Redevelopment District or TIF Term so long as Developer has been fully reimbursed for all TIF Eligible Project Costs incurred, and so long as all TIF Bonds issued as part of the Project Plan are retired.

B. Real Estate Taxes Captured. All Captured Real Estate Taxes generated within the Property as a result of the Project shall be deposited by the City upon receipt in a special fund (the “**TIF Fund**”) for the duration of the TIF Term and utilized to repay in the following order: City TIF District Expenses; TIF Bonds; and any unreimbursed Approved Eligible Project Costs. The specifics of the issuance and repayment of the TIF Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

C. Sales Taxes Captured. All Captured Sales Taxes generated within the Property as a result of the Project shall be deposited by the City in the TIF Fund for the duration of the TIF Term and utilized to repay, in the following order: City TIF District Expenses; TIF Bonds, and any unreimbursed TIF Eligible Project Costs. The specifics of the issuance and repayment of the TIF Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

D. TGT Captured. TGT (at a rate not to exceed the lesser of the Transient Guest Tax of the City or 8%) generated within the Property as a result of the Project shall be deposited by the City in the TIF Fund for the duration of the TIF Term and utilized to repay, in the following order: City TIF District Expenses; TIF Bonds, and any unreimbursed TIF Eligible Project Costs up to the TIF Cap.

Section 3.03. CID Funding of Approved Eligible Project Costs

A. CID Term. Developer has requested that the City create a CID that provides for the levying of a CID Sales Tax on all taxable sales occurring within the Property not to exceed two percent (2%) for a term of 22 years (the “**CID Term**”). Except as provided in **Section 9.02**, the City shall not, without the consent of Developer, terminate the CID or reduce the CID Term prior to such time as the Developer has been reimbursed for all CID Eligible Project Costs incurred or to be incurred by Developer as part of the Project; provided, however, that if all aspects of the Project are completed, the City may then terminate the CID or CID Term so long as Developer has been fully reimbursed for all CID Eligible Project Costs incurred, and so long as all TIF Bonds issued for the Project are retired.

B. CID Sales Tax Captured. All CID Sales Tax generated within the Property as a result of the Project shall be deposited by the City as provided in this Agreement and utilized solely to pay or repay, in the following order: (i) City CID District Expenses; (ii)

then principal and interest on the TIF Bonds; and (iii) then unreimbursed CID Eligible Project Costs.

Section 3.04. Bond Issuance; Conditions of Disbursement of Net Bond Proceeds

The parties contemplate a single issuance of TIF Bonds which is estimated by Developer to generate the Net Bond Proceeds to fund a portion of the TIF Eligible Project Costs for Phase 1. The parties agree that the bond schedule attached hereto as **Exhibit C** currently reflects commercially reasonable underwriting practices, including interest rates, and debt-service coverage ratios for TIF Bonds. This bond structure, which shall be subject to reasonable modifications to account for underwriting standards and market conditions as mutually agreed by the City and Developer, is described on **Exhibit C**.

A. Cooperation. The parties shall reasonably cooperate to achieve a TIF Bond issuance that will generate a portion of the Incentive Funding in a manner and time reasonably sufficient, when combined with Developer Financing, to facilitate completion of Phase 1 of the Project. All issuances shall be issued in the City's sole discretion after consultation with its financial consultants and advisors.

B. Conditions Precedent for Issuance of TIF Bonds. The issuance of the TIF Bonds shall be conditioned upon:

1. The Developer shall not be in default of this Agreement beyond any applicable cure period.

2. Evidence of Developer Financing and Developer Equity as required by **Section 3.01**.

3. Construction contracts and construction permits for the Garage, Cinergy, and that portion of the Apartments identified as Buildings C, D, and E on the Final Development Plan.

4. Evidence of compliance with the requirements of **Section 2.04(B)(2)**.

5. A current Project Budget that demonstrates that all of the Developer's Project Work relating to Phase 1 of the Project can be constructed within the Project Budget (as may be subject to change as provided herein) and in accordance with the Project Plan and Zoning Approvals.

6. A proposed schedule for the completion of Phase 1 of the Project, to the extent it is inconsistent or noncompliant with **Exhibit B-1**.

7. The Kansas Attorney General approves the transcript of proceedings relating to the TIF Bonds and bond counsel provides an opinion to the effect that the TIF Bonds have been validly issued under Kansas law and, if applicable, the interest on the TIF Bonds is exempt from Kansas and federal income taxation, subject to standard exceptions.

C. Satisfaction of Conditions. Upon receipt of the information set forth in **Section 3.04(B)**, the City shall within a reasonable time thereafter either:

1. Provide written notice to Developer that **Section 3.04(B)** has not been satisfied; or
2. Provide affirmative notice to Developer that the conditions precedent to its obligations to issue the TIF Bonds have been met at which time the City will commence the process to consider the issuance of TIF Bonds, subject to satisfactory underwriting and the terms of this Agreement.

D. Conditions Precedent for Distribution of Bond Proceeds. The distribution of Net Bond Proceeds shall be conditioned upon (the “**Disbursement Conditions**”):

1. Receipt by the Developer of all Zoning Approvals.
2. Construction contracts and construction permits for each component of Phase 1 of the Project.
3. Proof that funding from Bank OZK in the minimum amount of \$66,000,000 and from Bentall Green Oak in the minimum amount of \$34,000,000 will be available for Phase 1 of the Project.
4. Proof that Developer Financing in the minimum amount of \$15,729,598 is immediately available to Developer for utilization in Phase 1 of the Project.
5. A Certification of Expenditure for each item to be paid at the closing of the Bond issuance, in accordance with **Section 3.06**.
6. The creation and funding of the Escrow Account described in **Section 3.11(B)**.
7. The Master Funding Agreement is executed by the parties thereto.

E. Distribution of Net Bond Proceeds. Net Bond Proceeds will be held by the bond trustee in a project fund pursuant to the requirements set forth in this Agreement, the Bond Documents and the Master Funding Agreement. Provided, however, none of the Net Bond Proceeds will be disbursed until the Disbursement Conditions are satisfied. Following satisfaction of the Disbursement Conditions, Net Bond Proceeds shall be disbursed in the following order:

1. \$7,000,000 shall be disbursed upon receipt of Certification of Expenditures for construction of the parking garage and site work as shown on the Project Plan; and

2. The balance of the Net Bond Proceeds shall be disbursed pari-passu with the loan portions of the Developer Financing on a 25% (Net Bond Proceeds) and 75% (Developer Financing) basis.

F. City Credit Support. Under no circumstances will the City extend credit support to the financing of the Project, including but not limited to the TIF Bonds or IRBs.

Section 3.05. Certification of Expenditure

In order to receive reimbursement, the Developer shall submit to the City a Certification of Expenditure attesting to the expenditure of qualified Eligible Project Costs in accordance with the procedures outlined in **Section 3.06** below.

Section 3.06. Procedures for Certification of Expenditures

A. For Certifications of Expenditures to be made in connection with the Eligible Project Costs:

1. The Developer shall submit to the City a written request in the form attached (a) to the TIF Bond Trust Indenture for reimbursement from TIF Bonds, or (b) hereto as **Exhibit E** from Pay-As-You-Go Reimbursement, setting forth the amount for which certification is sought and identification of the Eligible Project Costs with respect thereto and shall certify that it complies with the requirements of **Section 3.04**.

2. The request for Certification of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as reasonably necessary to document appropriate payment pursuant to the Project Plan and this Agreement.

3. City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a request is submitted, to examine the records relating to all Eligible Project Costs to be paid, and to obtain such other information as is reasonably necessary to evaluate compliance with the terms hereof.

4. Subject to the provisions of **Section 3.04(E)**, City shall have 20 calendar days after receipt of any request hereunder to review and respond to any such request by written notice to the Developer. If the submitted documentation demonstrates that: (1) the request relates to Eligible Project Costs that are in compliance with the priority of disbursement set forth in **Section 3.04(E)**, (2) the expense was incurred, (3) the Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then City shall approve the request and authorize the escrow holder under the Master Funding Agreement to make, or cause to be made, reimbursement within ten (10) days of the certification from the Net Bond Proceeds under the Bond Documents. If City disapproves the request, City shall notify the Developer in writing of the reason for such disapproval within such 20 calendar-day period, and the reason for disapproval must be supported by

evidence. Approval of the Developer's requests for reimbursement will not be unreasonably withheld, conditioned or delayed. If City disapproves a portion of a request, the approved portion of such request shall be paid without delay as provided herein.

B. In the event the request is granted, City shall take such further action as is reasonably necessary to have the Developer reimbursed through the Master Funding Agreement.

Section 3.07. Right to Inspect

The Developer agrees that, for up to two years after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the Approved Eligible Project Costs incurred by Developer paid from the Net Bond Proceeds and Pay-As-You-Go Reimbursement (including all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices). The City shall have the right at its own cost and expense to audit (either through employees of the City or a firm engaged by the City) the books and records of the Developer relating to the Approved Eligible Project Costs.

The City shall have the right to inspect construction of the Project, however it is understood and agreed by Developer that such inspections and the results thereof shall in no manner be deemed to create a warranty or assurance of any kind, and no third-party (including Developer) may rely on same in any manner. The Developer shall pay any costs or fees of the City related to such inspections as required by City ordinances. The Developer will provide any construction progress reports or inspections required by its lender to the City. Notwithstanding the foregoing, if Developer's lender requires that Developer obtain one or more third-party inspection reports and Developer obtains same, Developer shall provide same to City and Developer shall not be required to pay for a separate third-party inspection report for City that relates to the same work.

Section 3.08. Certificates of Completion

Upon completion of the Developer Project Work, the Developer shall submit a report to the City certifying that the Developer Project Work has been completed in accordance with the Project Plan and that it is in compliance with all other provisions of the Agreement.

The City may conduct an investigation, and if the City determines that the Developer Project Work has been constructed in accordance with City code requirements and the Zoning Approvals, it shall issue to the Developer one or more certificates of occupancy for the Project ("**Certificate of Completion**"). If the City determines that the Developer Project Work has not been completed in accordance with the Project Plan or the Developer is not in compliance with this Agreement, then it shall not issue a Certificate of Completion and shall, within ten (10) business days of such finding, specify in writing to Developer the reasons for withholding its certification. At Developer's request, the City shall, within forty-five (45) days of Developer's request, hold a special hearing at which Developer may present additional evidence of compliance or seek further clarification of the City's finding of non-compliance. The City shall conduct any

further investigation in order to issue its Certificate of Completion within ten (10) business days of Developer's request. The Certificate of Completion shall be issued by the City in such form as to allow the Certificate to be recorded in the office of the Register of Deed of Johnson County, Kansas.

Section 3.09. Pay As You Go Reimbursement

Until such time as the TIF Bonds are issued, or in the event that market conditions restrict the ability of the City to issue the TIF Bonds pursuant to the specifications set forth herein, the parties shall institute Pay-As-You-Go Reimbursement for Approved Eligible Project Costs in accordance with applicable law and subject to the terms of this Agreement. To the extent a bond issuance is required by law to institute such Pay-As-You-Go Reimbursement, the City shall consider issuance of private placement bonds which will be purchased by the Developer or its designee.

Section 3.10. Limitation on Reimbursement from Net Bond Proceeds

The City and the Developer covenant and agree:

- A. No costs other than Approved Eligible Project Costs shall be reimbursed from the Net Bond Proceeds.
- B. Except for (i) real estate commissions and administrative costs directly related to the Project that might be paid to Cameron Group, LLC or GFI Capital Resources Group, Inc., (ii) insurance payments to an affiliate of the Developer, no otherwise Eligible Project Costs paid to third-parties in which the Developer and its principals have an ownership interest will be eligible for reimbursement.

Section 3.11. Interim Construction Financing – Issuance of Industrial Revenue Bonds (IRB) – Sales Tax Exemption for Construction Materials; Escrow

- A. Developer may make application to the City, at Developer's sole cost and expense, for the issuance by the City of private placement taxable IRBs for the sole purpose of qualifying for a sales tax Project Exemption Certificate pursuant to K.S.A. 79-3606(b) for Phase 1 and, upon substantial completion of Phase 1, for Phase 2. If approved by the City the IRBs will be purchased by the Developer or its lender. The term of the IRBs will not exceed five years. If approved, City shall cooperate with Developer in securing the sales tax Project Exemption Certificate.
- B. Developer shall deposit \$3,000,000 in an escrow account at Security Bank of Kansas City ("**Escrow Account**").
- C. The escrowed funds shall be deposited and held as follows:
 - 1. Upon the issuance of the TIF Bonds for Phase 1, \$2,000,000 shall be deposited and then shall be released and paid to the Johnson County, Kansas Collector in one or more payments as and when ad valorem real property taxes or special assessments for the Property are due; and

2. Upon the issuance of the TIF Bonds for Phase 1, \$1,000,000 (the “Developer Fee”) shall be deposited and then shall be released to the Developer according to the following schedule:

(a) \$250,000 upon the issuance by the City of a temporary certificate of occupancy for that portion of the Apartments identified as Buildings C, D, and E on the Final Development Plan for the Project;

(b) \$250,000 upon the issuance by the City of a temporary certificate of occupancy for the Garage;

(c) \$250,000 upon the issuance by the City of a temporary certificate of occupancy for Cinergy; and

(d) \$250,000 upon the issuance by the City of a temporary certificate for that portion of the Apartments identified as Building A.1 on the Final Development Plan for the Project.

If Developer fails to complete any component of Phase 1 in accordance with the Development Schedule, the then unreleased portion of the Developer Fee shall be released and paid to the City.

Section 3.12. City Consideration of Future Financing or Zoning Applications

Developer acknowledges and agrees that any future applications for effectuation of the terms and requirements of this Agreement or planning and zoning for the Project (including Phase 2 of the Project) are subject to the approval by the City’s Governing Body, after notice and public hearing, in accordance with applicable state or local law. Upon proper submittal to the City, the City agrees to schedule any such applications for consideration within the minimum time frame allowed by applicable Kansas law (subject to the City’s published meeting schedule).

Section 3.13. Failure to Approve Project Plan and/or IRB Financing

In the event the City fails to approve the Project Plan or IRB application as it relates to Phase 1, after the Project Plan or IRB application has been submitted by Developer and meets all requirements of the applicable statutes, City code and City policies, and provided Developer is not in default hereunder, the City and Developer agree that this Agreement will terminate, all funds on deposit in the Escrow Account will be returned to Developer and both parties shall be released from all their respective rights and obligations under this Agreement.

Section 3.14. Drainage and Benefit District

A. Developer acknowledges that the Stormwater Improvements have been completed and the costs thereof have been certified for reimbursement through (i) segregated property tax revenues in the Rock Creek Storm Drainage District #1 which includes only the Property (the “Drainage District”), and (ii) by special assessments against the Property imposed pursuant to the Special Assessment Storm Water District that includes the Property (the “Assessment District”). Developer agrees to execute all

documents reasonably necessary to facilitate the Drainage District and Assessment District, and shall not challenge or oppose same or the mill levies or special assessments within the Drainage District, directly or indirectly.

B. As additional consideration for Developer to enter into this Agreement, City hereby acknowledges that Developer would not execute this Agreement absent the following covenant: City covenants and agrees that no additional special benefit districts for the repayment of the City Project Work will be formed that include the Property. The City hereby acknowledges that upon the repayment of all costs levied via the Assessment District (in the approximate amount of Twelve Million Dollars (\$12,000,000)), the City shall take all necessary actions to terminate the Assessment District. This Section shall survive the termination of this Agreement.

ARTICLE IV

DEVELOPER OF RECORD

Section 4.01. Developer Designation

Developer currently owns all land within the Property and intends to develop the Project in a manner consistent with the Zoning Approvals and Project Plan for the purposes of carrying out that intent. Developer is hereby designated the exclusive Developer of Record of the Property for a period of 5 years from the effective date of the Ordinance adopting the Project Plan; provided, however, any amounts spent by Developer during such 5 year period shall be reimbursable beyond such 5 year period. And provided further that in the event the Property is conveyed, voluntarily or involuntarily, to a lender (or third-party without the consent of City) within such 5 year period, the provisions of this Article shall be null and void.

ARTICLE V

REAL ESTATE TAXES

Section 5.01. Intent to Pay Taxes

The Developer agrees that to the extent it is obligated to pay any portion of the real estate tax bills for the Property it intends to pay such taxes and assessments promptly on or before the due date of such tax bills. City reserves the right to withhold Pay As You Go reimbursements and the proceeds of TIF Bonds from Developer for such time as real estate taxes and assessments levied against the Property are delinquent. 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. The Developer and any other owners, tenants or occupants of real property in the Redevelopment District shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such other owner's property within the Redevelopment District.

Section 5.02. Notice of Protest

The Developer shall promptly notify the City in writing within ten (10) days of the filing of any protest of real estate taxes or valuation of any portion of the Property owned or controlled by the Developer by the County Assessor.

ARTICLE VI

OTHER DEVELOPER COVENANTS

Section 6.01. Maintenance and Repair

At all times during the term of this Agreement, the Developer shall maintain in good repair and condition the Property and the buildings and improvements therein owned or controlled by it from time to time, including the undeveloped area of the Property comprising Phase 2.

Section 6.02. Local, State, and Federal Laws

The Developer and City shall carry out the provisions of this Agreement in conformity with all applicable local, state, and federal laws and regulations.

ARTICLE VII

ASSIGNMENT, SALES, LEASING, AND MANAGEMENT

Section 7.01. Sale or Disposition of Property Within Redevelopment District

A. Control of Uses. Within the categories of land uses approved with the zoning and preliminary and final development plans, as those approvals may be amended from time-to-time, Developer shall have complete and exclusive control over sales and/or leasing of the property which it owns within the Property, including, without limitation, the fixing of rentals and the selection or rejection of tenants.

B. Sale or Lease. Subject to Section 7.01(C), the Developer may sell, transfer, convey, lease or otherwise dispose of real property owned by Developer within the Property, so long as said sale, transfer, conveyance, lease or disposition does not materially affect the repayment of the TIF Bonds. From and after the date of this Agreement, the Developer shall notify the City in writing of any sale, lease or other disposition of any or all of the real property in the Property. Provided, however, that Developer may not subdivide the Property without the approval of City, which approval is in addition to the provisions of the ordinances of the City setting forth requirements for the subdividing of land. Said approval shall not be unreasonably withheld, delayed or conditioned, however may be withheld if such subdivision materially affects the repayment of the TIF Bonds.

C. Transfer of Obligations. This Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the Developer except upon terms and conditions acceptable to the City. Any proposed assignee shall have the

qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations of the Developer, and, if the proposed transfer relates to a portion of any Redevelopment District on which Developer Project Work is underway, such obligations to the extent that they relate to such ongoing work. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of any Redevelopment District, such obligations, conditions and restrictions to the extent that they relate to such portion). In the event this Agreement is assigned in whole or part, the Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. Notwithstanding the foregoing, Developer may, without the prior written consent of City, assign its rights under this Agreement to any Related Entity, provided that (i) prior to such assignment Developer furnishes the City with the name of any such Related Entity, together with a certification of Developer, and such other proof as the City may reasonably request, that such assignee is a Related Entity of Developer and continues to remain such during the term of this Agreement and (ii) demonstrates to the City that it has the ability to perform all obligations of Developer under this Agreement. The City will have the right, at any reasonable time, to examine such books and records of Developer and Related Entity as may be necessary to establish that such assignee remains a Related Entity of Developer. For the purposes hereof, “control” will mean the power to direct or cause the direction of the management or policies of such corporation or entity.

D. Assumptions of Obligations. The Developer’s undertaking 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 Property, nor any purchaser of individual residential units, shall be bound by any obligation of Developer solely by virtue of being a tenant, provided, however, that no transferee or owner of property within the Property except the City and Developer shall be entitled to any rights whatsoever under this Agreement, except as specifically authorized in writing by the Developer and City.

E. Time of Performance for City’s Approval Rights. Any approval rights of the City under this Article VII must be exercised in the form of a written authorization or rejection within thirty (30) days of receipt of written notice from the Developer.

Section 7.02. Partial Assignment of Reimbursement Rights

A. At the Developer’s sole discretion, Developer may assign a limited right of reimbursement for Approved Eligible Project Costs (“Reimbursement Assignment”) to tenants, successors in interest, a Related Entity, creditors or subsequent landowners within the Property (“Reimbursement Assignees”).

B. All Reimbursement Assignments shall be made in the following manner:

1. An Assignment Agreement (the “Assignment Agreement”) shall be in form and content reasonably acceptable to the City.

2. The Assignment Agreement shall contain instructions to the Trustee or the City regarding the type of Approved Eligible Project Costs that the Reimbursement Assignee is entitled to, the timing and sequencing of the reimbursement as it relates to the timing and sequencing of reimbursements due to the Developer, and the amount of the reimbursement being granted to the Reimbursement Assignee.

3. To be valid, the Assignment Agreement shall be signed by:

(a) The City;

(b) The Developer; and

(c) The Reimbursement Assignee who shall agree to be bound by the terms of this Agreement as it relates to reimbursements of Approved Eligible Project Costs and specifically the provisions of Article III herein.

Once a valid Assignment Agreement is executed, the City and the Developer shall take such further steps as may be reasonably necessary to comply with the intent of this Section. Nothing herein shall relieve Developer from its obligations under this Agreement.

Section 7.03. Related Entity

Notwithstanding anything else contained in this Agreement, Developer shall have the right, without the consent of the City, to (a) transfer the property in the Property to a Related Entity or cause the property in the Property to be acquired by a Related Entity, and (b) to contribute to or transfer to such Related Entity any proceeds for reimbursement received by Developer as a result of expenditures made by either Developer or the Related Entity, provided that (i) prior to such assignment Developer furnishes the City with the name of any such Related Entity, together with a certification of Developer, and such other proof as the City may reasonably request, that such assignee is a Related Entity of Developer and continues to remain such during the term of this Agreement, and (ii) such Related Entity assumes or otherwise guarantees the obligations of the Developer hereunder, and (iii) such transfer is subject and subordinate to all obligations of Developer under this Agreement. The City will have the right, at any reasonable time, to examine such books and records of Developer and Related Entity as may be necessary to establish that such transferee remains a Related Entity of Developer.

ARTICLE VIII

AUTHORITY

Section 8.01. Actions

The City represents and warrants that upon proper application of the Developer it has taken, or will take, such action(s) as may be required and necessary to process the amendments, variations, and special use approvals relating to its zoning ordinances and its other ordinances, codes and regulations, as may be necessary or proper in order to insure the development of the Property in accordance with the Zoning Approvals and to enable the City to execute this Agreement and to carry out fully and perform the terms, covenants, agreements, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

Section 8.02. Powers

The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be 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 and provisions and does not require the consent of any other governmental authority.

Section 8.03. Authorized Parties

Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreement, 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, 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 the Developer Representative; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither party hereto shall have any complaint against the other as a result of any such action taken.

Section 8.04. Representations of the Developer

Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

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. To Developer's actual knowledge following reasonable inquiry, the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms

and conditions hereof do not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any material agreement or instrument to which it is now a party, and do not constitute a default under any of the foregoing.

C. No Litigation. Except for pending and threatened litigation regarding, or arising out of, the (1) alleged termination of leases by the Developer for space in the former Mission Mall and fee disputes with third party consultants, real estate brokers, real estate agents, or contractors, and (2) mechanic's liens that will be satisfied upon the closing of the TIF Bonds and the Developer Financing, no litigation, proceedings or investigations are pending or, to the actual knowledge of the Developer, threatened against the Developer (or any member of the Developer) or the Project or the Third Amended TIF Redevelopment Project Plan. In addition, no litigation, proceedings or investigations are pending or, to the actual knowledge of the Developer (including the actual knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of 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 (or any member 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 (or any member of the Developer) of, the terms and provisions of this Agreement.

D. No Material Change. (i) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for or arising out of or relating to the transactions contemplated by this Agreement, and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could 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 prior to the execution of this Agreement.

E. Governmental or Corporate Consents. To Developer's actual knowledge after reasonable inquiry, 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, delivery and performance by the Developer of this Agreement except as contemplated herein and except for City approvals pursuant to this Agreement and except for local, state and federal approvals in connection with the Project and public improvements to be performed by the City.

F. No Default. No default or 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 an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

G. Approvals. The Developer has or intends to obtain with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to complete the Developer Project Work. The Developer has no reason to believe that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will not be obtained in due course.

H. Compliance with Laws. To Developer's actual knowledge after reasonable inquiry, 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 as contemplated by this Agreement.

I. Developer Financing. The Developer warrants and represents to the City that, to the best of its present knowledge and belief, the Developer Financing will enable the Developer to timely implement the Developer Project Work as required in this Agreement. The financial statements of the Developer and members of the Developer furnished to the City or its consultants present fairly and accurately the financial position of such entities or persons as of the dates indicated. There has been no material adverse change in the financial position of such entities or persons since the date of such financial information. The Developer understands and agrees that the City has relied upon the financial capacity of the Developer and its members in its decision to enter into 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.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01. Events of Default

The following events shall constitute an Event of Default under this Agreement:

A. The Developer shall fail to meet the Development Schedule, including completing Phase 1 by the Completion Date.

B. The Developer shall fail to obtain and maintain the Developer Financing.

C. The failure of the Developer to maintain or cause to be maintained the insurance required by Section 2.06 hereof; and continuance of such failure for a period of thirty (30) business days after there has been given to the Developer by the City a written notice of such failure.

D. Failure by the Developer to observe and perform any other covenant, condition or agreement on the part of the Developer under this Agreement, including failure to perform the Developer Project Work in substantial accordance with the Development Schedule, for a period of 60 days after written notice of such default has been given to the Developer by the City during which time such default is neither cured by the Developer nor waived in writing by the City. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default.

E. Failure by City to observe and perform any covenant, condition or agreement under this Agreement, for a period of 30 days, to the extent such nonperformance relates to: (i) the payment of any sums to the Developer or the trustee of the Project fund under the Master Funding Agreement or (2) any administrative approvals related to the Site Plans, the Zoning Approvals, any related permits, or any amendment thereto, after written notice of such default has been given to the City by the Developer during which time such default is neither cured by the City nor waived in writing by the Developer. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default. Notwithstanding the foregoing, the Development Schedule shall be extended by a time equal to any nonperformance by the City occurring under this Section.

F. Failure by City to observe and perform any covenant, condition or agreement under this Agreement for a period of 60 days after written notice of such default has been given to the City by the Developer during which time such default is neither cured by the City nor waived in writing by the Developer. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default. Notwithstanding the foregoing, the Development Schedule shall be extended by a time equal to any nonperformance by the City occurring under this Section.

G. The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Developer, or adjudging the Developer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of the Developer under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of or for the Developer or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days, or evidence of means of alternative financing is not otherwise provided by the Developer to the City.

H. The commencement by the Developer, or any member of the Developer of a voluntary case, of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the Developer, any member of the Developer of bankruptcy or insolvency proceedings against it, or the filing by any of them of a petition or answer or consent

seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Developer or any member of the Developer or any substantial part of their property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by the Developer or any member of the Developer of any such action.

Section 9.02. Remedies on Developer's Default

Whenever any Event of Default by Developer shall have occurred and be continuing, subject to applicable cure periods, the City may take any one or more of the following remedial steps:

- A. Refuse to approve any further disbursements or reimbursements until such event of default is cured.
- B. Terminate this Agreement.
- C. Pursue any remedy at law or in equity.

Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement or the Project except as set forth in Section 3.11. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred for any action arising from this Agreement or the Project. Further, specific performance shall not be available to the City to require the Developer to perform the Developer Project Work except to the extent Developer has received Incentive Funding to be utilized for a specific component of the Developer Project Work and has not expended such Incentive Funding for that component of the Developer Project Work, in which case specific performance may be utilized to compel Developer to expend the portion of the Incentive Funding for such specific component of the Developer Project Work.

Section 9.03. Remedies on City Default

Whenever any Event of Default by City shall have occurred, Developer shall have available to it all remedies at equity and at law. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement or the Project. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred for any action arising from this Agreement or the Project. In connection with any Event of Default by the Developer or the City to perform its obligations hereunder, if either party files a lawsuit for the enforcement of the performance or observance of any covenants or agreements on the part of the other party herein contained, the non-prevailing party agrees that it will, on demand thereof, pay to the prevailing party the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE X

GENERAL PROVISIONS

Section 10.01. City Responsibility

The City shall be responsible for the publication, mailing or delivery of such notices of public hearings or amendments thereto, and shall conduct public hearings as required by state statutes, and shall, if the requisite votes are received, pass such ordinances, to include a TIF and/or CID administrative fee, necessary to legally create and carry out the Project Plan and any future amendments.

Section 10.02. City Expenses

A. City TIF District Expenses: The City shall be reimbursed by Developer for its actual reasonable out-of-pocket expenses incurred in approving the Project Plan and this Agreement, including but not limited to the fees and costs of its financial consultants, third-party construction oversight personnel, engineers, bond counsel and attorneys (the “City TIF District Expenses”). Said reimbursements to the City shall be deemed Eligible Public Costs. City TIF District Expenses shall, to the maximum extent permitted by law, be reimbursed as costs of issuance of any TIF Bonds.

B. City CID District Expenses: The City shall be reimbursed by Developer for its actual reasonable out-of-pocket expenses incurred in approving any CID and this Agreement including but not limited to the fees and costs of its financial consultants, third-party construction oversight personnel, engineers, bond counsel and attorneys (the “City CID District Expenses”). Said reimbursements to the City shall be deemed Eligible Public Costs. City CID District Expenses shall, to the maximum extent permitted by law, be reimbursed as costs of issuance of any TIF Bonds.

C. Bond Administrative Fees. The City shall not charge the Developer any bond application or administrative fees related to the Project after the date of this Agreement; provided, however, the Developer shall reimburse the City for all actual expenses incurred in the issuance of IRBs for the Project.

D. Limitation on Construction Fees. Developer’s obligation to pay or reimburse the City for any of the following shall not exceed Three Hundred Thousand Dollars (\$300,000) for the entire Project: construction oversight fees, engineering fees, building permit fees, plan review fees, or any out-of-pocket fees or costs related to the design or construction of the Project; provided, however, the amount of City fees set by ordinance shall not be included in such maximum amount.

Section 10.03. Limited Obligations

The IRBs shall not constitute a debt or general obligation of the City, the State or any political subdivision thereof, shall be payable solely from the revenues described in the Bond Documents, and shall not constitute or give rise to or impose upon the City, the State or any political subdivision thereof a pecuniary liability or a charge upon its general credit or taxing

powers. Under no circumstances shall the City be obligated to extend credit support to any issuance of TIF Bonds and/or IRBs.

Section 10.04. Time of Essence

Time is of the essence of this Agreement.

Section 10.05. Amendment

This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Developer and the City or their successors in interest.

Section 10.06. Liens

The Developer agrees that all existing mechanics' liens against the Property shall be satisfied simultaneously with the issuance of the TIF Bonds, and thereafter, no mechanics' liens 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 there from. The City reserves the right to require Developer to deposit a bond or other form of surety to ensure any mechanic's liens adjudicated valid are timely discharged.

Section 10.07. Indemnity and Release

The Developer covenants and agrees, at its expense, to pay and to indemnify and save the City and its officials, members, officers, employees and agents harmless from and against all loss, liability, damage or expense arising out of any and all claims, demands, expenses, penalties, fines, taxes of any character or nature whatsoever regardless of by whom imposed, and losses of every conceivable kind, character and nature whatsoever arising from the Developer's Project Work, including, but not limited to, claims for loss or damage to any property or injury to or death of any person, asserted by or on behalf of any person, firm, corporation or governmental authority arising out of or in any way connected with the Developer's Project Work or the Property, or the conditions, occupancy, use, possession, conduct or management of, or any work done in or about the Project by the Developer or its agents. The Developer also covenants and agrees at its expense to pay, and to indemnify and save the City and its officials, members, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by the Developer in any action or proceeding brought by reason of any such claim, demand, expense, penalty, fine or tax related to or arising out of the Developer's Project Work. If any action or proceeding subject to the provisions of this **Section 10.07** is brought against the City or its officials, members, directors, officers, employees or agents by reason of any such claim or demand, the Developer, upon notice from the City, covenants to resist and defend such action or proceeding on demand of the City or its officials, members, directors, officers, employees or agents. Notwithstanding the foregoing, neither the City nor its officials, members, directors,

officers, employees and agents shall be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by their own negligent, willful and malicious acts or omissions or negligent, willful and malicious acts or omissions of their own members, directors, officers, employees or agents.

Section 10.08. Immunity of Officers, Employees, and Members of the City

No recourse shall be had for the payment of the principal of or interest on the Project or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future official, officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, members, directors, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 10.09. No Other Agreement

Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter of Project approval, construction and financing and is a full integration of the agreement of the parties.

Section 10.10. Assigns and Transfers

This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

Section 10.11. Severability

If any provision, covenant, agreement, or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 10.12. Kansas Law

This Agreement shall be construed in accordance with the laws of the State of Kansas.

Section 10.13. Notice

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

To the Developer:

Aryeh Realty, LLC
50 Broadway
New York, New York 10004
Attn: Allen Gross

Email: agross@gficap.com

With copy to:

Korb K. Maxwell
Polsinelli
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Email: KMaxwell@Polsinelli.com

To the City:

Mayor
City of Mission, Kansas
6090 Woodson
Mission, KS 66202
Email: sflora@missionks.org

With copies to:

Lewis A. Heaven, Jr.
Spencer Fane LLP
6201 College Blvd, Suite 500
Overland Park, KS 66211
Email: pheaven@spencerfane.com

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

Section 10.14. 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.

Section 10.15. Recordation of Agreement

The parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Johnson County, Kansas.

Section 10.16. Consent or Approval

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

Section 10.17. Notice of Developer Default to Lender; Lender Right to Cure; Modifications

A. In the event of any act or omission by Developer which would give City the right to terminate the Agreement, or make any claim against Developer for the payment of money in an amount over \$50,000.00 or for specific performance, City will not make such claim or exercise such right until (i) it has given written notice of such act or omission to (a) Developer; and (b) a Fee Mortgagee (as defined below) as to whom Developer has instructed City in writing to give copies of all of City's notices to Developer; and (ii) Developer or Fee Mortgagee fails to cure such act or omission within thirty (30) days after written notice thereof from City (or if such act or omission cannot be cured within such thirty (30) day period fails to undertake to cure such act or omission within such thirty (30) day period and to diligently pursue to completion such cure or remedy within sixty (60) days as relates to the Developer and seventy (70) days as relates to Fee Mortgagee, or such longer period as may be required if such cure or remedy is not reasonably susceptible to cure within said period. Provided, however, notwithstanding the foregoing, if the default is of such a nature that it cannot be remedied by Fee Mortgagee without possession of the property subject to the Fee Mortgage (defined below), then the default shall be deemed to be remedied if: (a) within thirty (30) days after receiving written notice from the City setting forth the nature of such event of default, or prior thereto, the Fee Mortgagee shall have acquired such property or shall have commenced foreclosure proceedings, (b) the Fee Mortgagee diligently prosecutes any such proceedings to completion, (c) within such thirty (30) day period the Fee Mortgagee shall have fully cured any default in the payment of any monetary obligations owed to the City hereunder, and all non-monetary obligations of Developer under this Agreement which do not require possession of property subject to the Fee Mortgage and shall thereafter continue to perform faithfully all such monetary and non-monetary obligations of Developer under this Agreement which do not require possession of property subject to the Fee Mortgage, and (d) after gaining possession of such property following foreclosure or deed in lieu thereof, the Fee Mortgagee performs all other obligations of Developer hereunder as and when the same become due.

B. Developer (or its Related Entity) shall have the right at any time to subject all or any portion of its fee or leasehold interest in property owned by Developer in the Property, including any residual interest in the building improvements, to one or more mortgages, deeds of trust or like instruments or to otherwise encumber such fee interest ("Fee Mortgage"), provided that Developer forwards to City a written notice setting forth the name and address of the mortgagee, beneficiary or holder ("Fee Mortgagee") of such Fee Mortgage. In addition to the rights of Fee Mortgagee set forth above, the Fee Mortgagee shall be entitled to the benefits set forth in this Section. Subject to Section 7.02 of this Agreement, Developer (or its Related Entity) shall also have the right to collaterally assign to any Fee Mortgagee as additional collateral for the obligations secured by the Fee Mortgage all of Developer's rights under this Agreement relating to the property encumbered by the Fee Mortgage.

1. *Modification of Agreement.* Except in the exercise of any remedies under Article 9 which may run in favor of City (but subject to Fee Mortgagee notice

and cure rights in this Section), this Agreement shall not be canceled, surrendered, modified or amended in a material manner without the written consent of the Fee Mortgagee under any Fee Mortgage and any such change requiring the consent of the Fee Mortgagee shall not be binding on the Fee Mortgagee without the Fee Mortgagee's consent, which will not be unreasonably withheld, delayed or conditioned; provided, however, subject to the foregoing, nothing contained herein shall modify or diminish the rights and remedies of the City provided under the terms of this Agreement. An amendment or modification of the Agreement shall only be deemed to be material if such amendment or modification alters the Agreement term or the amount, payment or priority of Net Bond Proceeds or any other amounts payable by Developer or City under this Agreement or materially diminishes any non-monetary obligation of City or materially increases any non-monetary obligation of Developer.

2. *Substitute Performance.* Each Fee Mortgagee under a Fee Mortgage shall, within the 30 day cure period provided herein (subject to such additional cure periods as provided in this Agreement for Fee Mortgagee), have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and City shall accept such performance by any such Fee Mortgagee with the same force and effect as if furnished by Developer.

3. *Special Rights of Fee Mortgagee.* No Fee Mortgagee under a Fee Mortgage shall be required, pursuant to this Section, to continue to proceed to obtain possession of the property, to continue in possession of the property as mortgagee or to continue to prosecute foreclosure proceedings following the cure of such default. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other default by Developer during any period of City's forbearance under this Section, but in such event the Fee Mortgagee shall have all of the rights and protections provided in this Section with respect to such other default. If the Fee Mortgagee, or its nominee, or a receiver or a purchaser at a foreclosure sale shall cure all defaults of Developer hereunder then the defaults of any prior Developer hereunder which are not continuing shall no longer be deemed to be defaults hereunder.

4. *Limitations on Fee Mortgagee's Liability.* No Fee Mortgagee under a Fee Mortgage shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Fee Mortgagee takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the owner of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. Thereafter, such Fee Mortgagee and its successors and assigns shall each remain personally liable for the obligations of Developer only so long as they are in possession of the fee estate as Fee Mortgagee or the owner of the fee estate under this Agreement. In addition, no Fee Mortgagee or purchaser upon acquiring any portion of Property through foreclosure of a Fee Mortgage, deed in lieu, or in aid thereof, shall be liable or responsible for any liabilities or obligations under this Agreement except to the

extent arising or accruing during the Fee Mortgagee's or purchaser's period of ownership and any liabilities of Fee Mortgagee shall be in all events limited to its interest in the property acquired pursuant to foreclosure or deed in lieu of the property acquired.

5. Any Fee Mortgagee or purchaser upon acquiring any portion of the Property through foreclosure of a Fee Mortgage, deed in lieu, or in aid thereof, shall automatically be (i) deemed to have assumed the obligations of the Developer under this Agreement arising or accruing during the Fee Mortgagee's or purchaser's period of ownership, and (ii) deemed to be Developer's assignee and entitled to exercise all rights of the Developer under this Agreement relating to the property acquired by the Fee Mortgagee or such purchaser. Notwithstanding the foregoing, the provisions of Article VII hereof shall govern any proposed further assignment of the Agreement by Fee Mortgagee or such purchaser.

6. Following receipt of written notice from a Fee Mortgagee that Fee Mortgagee is exercising its rights to exercise Developer's rights and assume Developer's obligations under this Agreement pursuant to the Fee Mortgage and/or any other loan document, the City as requested by the Fee Mortgagee shall perform all of its respective obligations under this Agreement to and for the benefit of Fee Mortgagee or such other party as Fee Mortgagee shall direct, and shall recognize Fee Mortgagee's right to exercise all rights of Developer under this Agreement until, and subject to Article VII hereof, the receipt by City of a subsequent notice from Fee Mortgagee directing that performance be directed to another party. Each party who receives a notice from Fee Mortgagee or any other Mortgagee shall be entitled to rely upon such notice and shall not be required to investigate or determine the validity or accuracy of such notice of the validity or enforceability of the assignment. Developer hereby indemnifies and agrees to defend and hold City harmless from and against any and all expenses, loss, claims, damage or liability arising out of such party's compliance with such notice or performance of the obligations under this Agreement made in good faith in reliance on and pursuant to such notice.

Section 10.18. Term of Agreement

Except as otherwise provided in Section 3.13, this Agreement will become effective upon approval of the Project Plan in accordance with the TIF Act, and funding of the Escrow Account and shall continue until the last to expire of the TIF Term and CID Term.

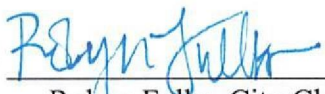
*[Remainder of page left blank intentionally.
Signature pages to follow.]*

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

CITY OF MISSION, a Kansas municipal corporation

By: 
Solana Flora, Mayor

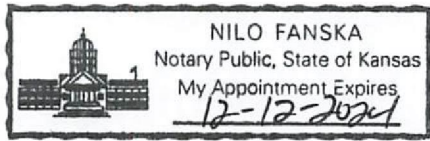
ATTEST:

By: 
Robyn Fulks, City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 20 day of January, 2023, to me personally known, appeared Solana Flora and Robyn Fulks, who, being by me duly sworn did say that they are the Mayor and City Clerk, respectively, of the City of Mission, a Kansas municipal corporation, and that the seal affixed to the foregoing instrument is the City's seal and that said instrument was signed, sealed and delivered in behalf of said City by authority of its City Council.

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




Notary Public

My Commission Expires:
12-12-2024

ARYEH REALTY, LLC

By: [Signature]
Name: Andrew Ashwal
Title: Authorized Signatory

STATE OF New York)
) ss.
COUNTY OF New York)

On this 16th day of March, 2023, to me personally known, appeared Andrew Ashwal, who, being by me duly sworn did say that he is the Authorized Signatory of ARYEH REALTY, LLC, a limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company, and said officer acknowledged said instrument to be the free act and deed of said limited liability company.

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

Kimberly Small
Notary Public

My Commission Expires:
July 1, 2025
[SEAL]

KIMBERLY SMALL
Notary Public, State of New York
Reg. No. 01SM6285227
Qualified in Queens County
Commission Expires July 1, 2025

EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Project Budget
- Exhibit B-1 Construction Schedule
- Exhibit C Bond Schedule
- Exhibit D Insurance Requirements
- Exhibit E Certification of Expenditures Form

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that part of the West half of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, described as follows:

COMMENCING at the Southwest corner of the Northwest Quarter of Section 9, Township 12 South, Range 25 East; thence North 1 degree 49 minutes 20 seconds West along the West line of the Northwest Quarter of said Section 9 a distance of 349.28 feet (339.15 feet Deed) to a point; thence North 88 degrees 10 minutes 40 seconds East a distance of 1740.63 feet (1742.10 feet Deed) to a point on the East right of way line of Roeland Drive, the POINT OF BEGINNING; thence North 33 degrees 29 minutes 13 seconds West along the East right of way line of Roeland Drive a distance of 358.19 feet to a point on the South right of way line of Johnson Drive; thence North 67 degrees 34 minutes 47 seconds East along the South right of way line of Johnson Drive a distance of 143.70 feet to a point; thence North 68 degrees 09 minutes 28 seconds East along the South right of way line of Johnson Drive a distance of 434.76 feet to a point; thence South 21 degrees 50 minutes 32 seconds East along the South right of way line of Johnson Drive a distance of 1.53 feet to a point; thence North 72 degrees 37 minutes 31 seconds East along the South right of way line of Johnson Drive a distance of 342.82 feet to a point; thence in a Northeasterly direction along the South right of way line of Johnson Drive and along a curve to the right, having a radius of 297.25 feet, through a central angle of 9 degrees 19 minutes 18 seconds, an arc distance of 48.36 feet to a point of compound curvature; thence in a Southeasterly direction along the South right of way line of Johnson Drive and along a curve to the right, having a radius of 106.25 feet, through a central angle of 85 degrees 00 minutes 09 seconds, an arc distance of 157.63 feet to a point of compound curvature, said point also lying on the West right of way line of Roe Avenue; thence in a Southeasterly direction along the West right of way line of Roe Avenue and along a curve to the right, having a radius of 397.25 feet, through a central angle of 9 degrees 59 minutes 48 seconds, an arc distance of 69.31 feet to a point; thence South 3 degrees 03 minutes 14 seconds East along the West right of way line of Roe Avenue a distance of 111.19 feet to a point; thence South 2 degrees 07 minutes 38 seconds East along the West right of way line of Roe Avenue a distance of 200.66 feet to a point on the Northwesterly right of way line of Shawnee Mission Parkway; thence South 1 degree 54 minutes 32 seconds East a distance of 42.62 feet to a point; thence South 37 degrees 23 minutes 58 seconds West a distance of 936.45 feet to a point; thence North 52 degrees 36 minutes 02 seconds West a distance of 44.00 feet to a point on the East right of way line of Roeland Drive; thence in a Northwesterly direction along the East right of way line of Roeland Drive and along a curve to the right, having a radius of 260.50 feet, through a central angle of 53 degrees 32 minutes 02 seconds, an arc distance of 243.40 feet to a point of reverse curvature; thence in a Northwesterly direction along the East right of way line of Roeland Drive and along a curve to the left, having a radius of 490.00 feet, through a central angle of 34 degrees 25 minutes 13 seconds, an arc distance of 294.37 feet to a point; thence North 33 degrees 29 minutes 13 seconds West along the East right of way line of Roeland Drive a distance of 125.55 feet to the POINT OF BEGINNING and containing 721,889 Square Feet or 16.572 Acres, more or less.

EXHIBIT B

Project Budget

	Phase 1 Budget	Phase 2 Budget	Total Budget (All Phases)	TIF Eligible Costs	CID Eligible Project Costs
<u>Land, Demolition & Prerequisites Costs</u>					
Property Acquisition	\$7,550,000	\$0	\$7,550,000	\$7,550,000	\$7,550,000
Tenant Buyouts and Relocation	512,568	-	512,568	512,568	512,568
Demolition / Earthwork	2,534,838	-	2,534,838	2,534,838	2,534,838
Architectural / Survey / Site Design	5,763,159	1,656,846	7,420,005	-	-
Engineering	2,286,933	657,468	2,944,401	-	-
Legal	1,445,546	415,579	1,861,125	-	-
Real Estate Taxes Paid-to-Date	1,886,548	542,362	2,428,909	-	-
Storm Water Assessment Paid-to-Date	4,197,170	-	4,197,170	4,197,170	4,197,170
Interest on Past Loans	4,073,300	1,171,030	5,244,330	-	-
Closing Costs / Mortgage Tax on Past Loans	1,524,395	438,247	1,962,642	-	-
Prior Contractor General Conditions / Fees / Other	998,265	286,990	1,285,255	-	-
Marketing / Promotions	450,496	129,513	580,009	-	-
Miscellaneous 3rd Party Expenses	637,083	183,155	820,238	-	-
Developer- General Conditions	416,143	122,511	548,654	-	-
Developer- Miscellaneous	377,372	108,490	485,862	-	-
Developer- Project Management / Coordination	758,563	218,078	976,641	-	-
Developer - Travel / Lodging / Meals	358,170	102,970	461,140	-	-
Developer- Meals & Entertainment	16,236	4,668	20,904	-	-
Developer - Allocated Overhead	506,063	145,487	651,550	-	-
Developer- Other Legacy less Minimum Barnts	793,347	228,079	1,021,426	-	-
Total Land Costs	37,096,194	6,411,473	43,507,667	14,794,576	14,794,576
<u>Site Work, Infrastructure & Parking</u>					
Hard Costs- Parking Garage Spaces	16,162,382	-	16,162,382	16,162,382	16,162,382
Stormwater Improvements*	5,122,804	1,472,750	6,595,554	6,595,554	6,595,554
Sitework	4,412,040	490,227	4,902,267	4,902,267	4,902,267
Offsite	1,710,261	482,000	2,192,261	2,192,261	2,192,261
Total Site Work	27,407,487	2,444,977	29,852,464	29,852,464	29,852,464
<u>Hard Costs</u>					
Hard Costs Retail (Roeland)	3,854,490	-	3,854,490	346,821	3,854,490
Hard Costs Retail (Johnson)	202,500	-	202,500	18,221	202,500
Hard Costs Cinery / Food Hall Space	18,242,780	-	18,242,780	1,641,459	18,242,780
Hard Costs Hotel (includes Restaurant & Spa)	-	23,088,057	23,088,057	2,077,430	23,088,057
Hard Costs Residential	52,013,611	-	52,013,611	4,680,109	52,013,611
Hard Costs Office	-	13,736,172	13,736,172	1,235,961	13,736,172
Payment & Performance Bonds	591,421	340,417	931,838	207,078	931,838
Insurance/Builders Risk	1,148,324	712,309	1,860,633	396,364	1,860,633
General Contractor Fee	3,275,050	1,431,323	4,706,373	823,114	4,706,373
Tenant Improvements	9,609,785	5,000,000	14,609,785	-	14,609,785
Contingency	5,029,003	2,014,493	7,043,496	-	7,043,496
Total Hard Costs	93,966,964	46,322,770	140,289,734	11,426,556	140,289,734

Soft Costs					
Architecture/Engineering Services	4,827,580	2,237,795	7,065,374	1,570,109	7,065,374
Legal	855,073	466,882	1,321,965	293,775	1,321,965
Civil Engineer (includes geo-tech and survey)	486,000	54,000	540,000	135,015	540,000
Testing & Special Inspections	400,000	425,000	825,000	183,336	825,000
Real Estate Taxes (Forward)	2,000,000	1,330,000	3,330,000	-	3,330,000
Residential Marketing and FF&E	325,000	-	325,000	-	50,000
Project Branding & Marketing	185,456	162,500	347,956	-	347,956
Hotel Pre-Opening	-	200,000	200,000	-	200,000
Hotel FFE	-	5,050,000	5,050,000	-	425,000
Hotel Operator Technical Services Fee	-	75,000	75,000	-	75,000
Development Fee	3,488,240	1,857,763	5,346,003	-	2,000,000
Project Staffing	900,000	650,000	1,550,000	-	-
Residential Staffing	160,000	-	160,000	-	160,000
Permit & Fees	523,750	354,209	877,959	195,105	877,959
Accounting (Audit, etc.)	75,000	176,712	251,712	55,937	251,712
Developer Reimbursements	60,857	152,000	212,857	-	-
Leasing Commissions	1,667,698	1,676,000	3,343,698	-	3,343,698
Soft Cost Contingency	1,015,863	947,071	1,962,934	436,215	1,962,934
Total Soft Costs	16,970,517	15,814,942	32,785,459	2,869,492	22,776,599
Financing Costs					
Mortgage Broker Fee	326,250	216,250	542,500	108,611	542,500
Origination Fee	1,112,500	624,749	1,737,249	347,798	1,737,249
Title Insurance	157,064	335,000	492,064	98,512	492,064
Legal (Owner and Lender)	757,774	550,000	1,307,774	261,817	1,307,774
Construction Monitoring	238,037	228,750	466,787	93,451	125,000
3rd Parties	25,000	10,000	35,000	7,007	376,787
Construction Interest Reserve	11,546,000	5,500,000	17,046,000	5,000,000	5,000,000
Total Financing Costs	14,162,626	7,464,758	21,627,383	5,917,196	9,581,383
Totals:	\$189,603,788	\$78,458,920	\$268,062,707	64,860,285	217,294,756

EXHIBIT B-1

DEVELOPMENT SCHEDULE

- Cinergy – Complete construction no later than 24 months after construction commencement.
- Parking Garage – Complete construction no later than 24 months after construction commencement.
- Buildings labeled C, D, and E on the Final Development Plan – Complete construction no later than 39 months after construction commencement.
- Building labeled A.1 on the Final Development Plan – Complete construction no later than 42 months after construction commencement.
- ALL PHASE 1 IMPROVEMENTS SHALL BE COMPLETED NO LATER THAN 46 MONTHS AFTER TIF BOND ISSUANCE, subject to Section 2.11.
- Hotel –
 - Commence construction no later than 12 months after completion of all Phase 1 components.
 - Complete construction no later than 36 months after construction commencement.
- Office –
 - Commence construction no later than 24 months after completion of all Phase 1 components.
 - Complete construction no later than 36 months after construction commencement.

EXHIBIT C
BOND SCHEDULE

EXHIBIT D

INSURANCE REQUIREMENTS

Developer shall procure and maintain, or cause to be procured and maintained, for the duration of the agreement, occurrence form insurance coverages against claims for injuries to persons or damages to property which may arise from or in connection with the project. Any “claims-made” coverage will require coverage for two years after completion of project. The cost of such insurance shall be included in the Developer’s costs.

A. Coverages and Minimum Limits.

1. Commercial General Liability: [ISO “occurrence” form or its equivalent] \$1,000,000 per occurrence limit and products - completed operations aggregate limit. Any general aggregate limit should be at least \$2 million with a per site/project endorsement.

2. Business Auto Coverage: (*Owned and non-owned autos*) \$1,000,000 per occurrence limit.

3. Workers Compensation and Employers Liability: Workers compensation statutory limits as required by the state of Kansas and employer’s liability limits of \$100,000/\$500,000. *When workers compensation insurance policy is applicable, waiver of subrogation and “other states” coverage is required.*

4. Builder’s Risk. Coverage equal to project values.

5. Professional Liability. Architect/engineer liability of at least \$5,000,000.

6. Excess/umbrella. Minimum limit of \$10,000,000 per occurrence/aggregate, reduced to minimum limit of \$5,000,000 for subcontractors

7. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.

8. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Developer.

B. Additional Insured. The City, its officials, officers, employees and agents shall be listed as additional insureds as respect to the project. Any other insurance maintained by the city shall be secondary and not contribute with the coverage provided by the Developer.

C. This agreement shall not modify or waive the provisions available to the City contained in the Kansas Tort Claims Act, Chapter 75, Article 61 of the Kansas Statute Annotated.

D. Verification of Coverage.

1. Developer shall furnish the City certificates of insurance accompanied by ISO Form Additional insured endorsements or equivalent evidencing the coverage required

by the City. The endorsements and certificate for each insurance policy are to be executed by a person authorized by the insurer to bind coverage on its behalf.

2. The certificate of insurance must contain a statement that the insurance coverages are provided by Kansas admitted insurance companies. Those not admitted must be approved by City.

3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance with the name, address, and telephone number of the claims office indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above described coverages shall be assumed by and at the sole risk of the Developer.

4. If any of the foregoing insurance coverages are "Claims-Made" form, coverage will be required to remain in force for a minimum of two years after completion of the project. Also, proof of annual renewal of coverages shall be filed with the city during the life of the project or the agreement which ever is longer and then "Claims-Made" forms for two years thereafter.

E. Cancellation. Each insurance policy required shall not be suspended, voided, or canceled; except after thirty (30) days' written notice has been given to the City.

F. Subcontractors. The Developer shall be included as an additional insured on the policies of its general contractor and subcontractors.

EXHIBIT E

CERTIFICATION OF EXPENDITURES FORM

Request No. _____

Date: _____

Pursuant to **Section 3.06** of the Redevelopment Agreement for the Mission Gateway Project (the “**Agreement**”) between the City of Mission, Kansas and the undersigned (the “**Developer**”), the Developer requests payment or reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Agreement.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the Agreement.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other Disbursement Request previously filed with the City.
6. There has not been filed with or served upon the Developer any notice of any lien, right to a 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.
7. All work for which payment is now or has heretofore been requested (insofar as such payments relate to the construction, remodeling and renovation portions of the Project) has been performed in accordance with the plans and specifications therefore.
8. Lien waivers for costs for which payment is hereby requested have been received and are attached hereto as **Attachment II** hereto.

ARYEH REALTY, LLC

Title: _____

Approved this ____ day of _____, 20__

CITY OF MISSION

By: _____
City Representative

**ATTACHMENT I
TO CERTIFICATION OF EXPENDITURE
REDEVELOPMENT AGREEMENT FOR THE GATEWAY RETAIL DISTRICT**

REQUEST NO. _____

DATED _____

SCHEDULE OF PAYMENTS REQUESTED

Person, firm
or corporation
to whom payment
is due

Amount to
be paid

General classification and
description of the costs of issuance for
which the Obligation to be paid
was incurred
