

CITY OF MISSION, KANSAS
FINANCE & ADMINISTRATION COMMITTEE

WEDNESDAY, OCTOBER 9, 2019

6:30 P.M.

Mission City Hall

PUBLIC HEARINGS / PUBLIC COMMENTS

PUBLIC PRESENTATIONS / INFORMATIONAL ONLY

ACTION ITEMS

1. Resolution Calling a Public Hearing on the Division of the Rock Creek Redevelopment (TIF) District - Laura Smith ([page 3](#))

As we've taken steps to re-evaluate the Gateway Redevelopment Agreement, and started exploring issuance of the Special Obligation (SO) bonds it contemplates, several issues have been identified related to the underlying Tax Increment Financing (TIF) District. The TIF Act provides that increment is computed on a district-wide basis. This works where there is (1) a single project area within a district, or (2) multiple project areas, all of which have positive incremental assessed valuation (AV). However, when some project areas have negative incremental AV but others have positive incremental AV, those areas with positive increment are unable to be compensated until the entire district is generating positive increment. Not all of the project areas within the current Rock Creek Redevelopment District are generating positive increments, and in order to resolve the issues, it is recommended that the City proceed to separate the existing Rock Creek Redevelopment District into five (5) districts.

2. Amendment to Third Amended and Restated Redevelopment Agreement, The Gateway Project - Laura Smith ([page 15](#))

Currently, the Gateway project is being developed in accordance with the Third Amended and Restated Redevelopment Agreement approved in October 2017. Since early 2019, with the signed lease for the Cinergy entertainment facility, both the City and the Developer have been aware that an amendment would be required as the anticipated construction phasing for the project has changed. The City's project team has been working for several months with the Developer's team to review the changes and develop an amendment that respects the components of the 2017 agreement, but reflects the realities of the project in 2019.

3. Ordinance Excluding Certain Portions of Land from the City of Mission's Corporate Limits (Roeland Park De-Annexation) - Laura Smith ([page 91](#))

Since December 2018, Mission and Roeland Park have been discussing the benefits of annexation/de-annexation of approximately .7 of an acre at the northeast corner of Johnson Drive and Roe Boulevard. In September, the cities agreed to proceed with the process with the first step being the passage of a resolution calling a public hearing. The Mission City Council adopted Resolution 1034 calling the public hearing for 7 p.m. on Wednesday, October 16, 2019. Immediately following the public hearing, the Council will consider an ordinance to exclude the property from Mission's corporate boundaries. The City of Roeland Park will also need to convene a meeting and adopt an ordinance to annex the same property in order to complete the de-annexation process.

DISCUSSION ITEMS

OTHER

4. Department Updates - Laura Smith

Sollie Flora, Chairperson
Kristin Inman, Vice-Chairperson
Mission City Hall, 6090 Woodson St
913-676-8350

City of Mission	Item Number:	1.
ACTION ITEM SUMMARY	Date:	October 9, 2019
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: A Resolution calling a public hearing regarding the division of the Rock Creek Redevelopment (TIF) District into five Redevelopment Districts.

RECOMMENDATION: Approve the Resolution calling a public hearing for 7 p.m. on Monday, November 18, 2019 regarding the division of the Rock Creek Redevelopment (TIF) District into five Redevelopment Districts.

DETAILS: In 2006, the City established the Rock Creek TIF District (via Ordinances 1190 and as amended by Ordinance 1195). The District contained approximately 71 acres of property, which generally follows the Rock Creek Floodplain from Roe to Lamar. The larger district was created to aid redevelopment in areas that had been put into the 100-year floodplain just a few years earlier. The Rock Creek District included four (4) redevelopment areas within the larger district.

In 2009, the District was amended (Ordinance 1299) to included five redevelopment project areas. Areas 1, 3 and 4 as remained as previously established, and within area 2, a separate redevelopment project area (2A) which included the Capitol Federal property was created.

The TIF Act provides that increment is computed on a district-wide basis. This law works where there is (1) a single project area within a district, or (2) multiple project areas, all of which have positive incremental assessed valuation (AV). However, when some project areas have negative incremental AV but others have positive incremental AV, those areas with positive increment are unable to be compensated until the entire district is generating positive increment.

As we've taken steps to re-evaluate the Gateway Redevelopment Agreement, and started exploring issuance of the Special Obligation (SO) bonds it contemplates, we have identified some issues which need to be addressed, including:

1. What is a fair way to allocate the future incremental property tax revenues generated by the Rock Creek District as between Gateway, CapFed and Project Areas 2-4?
2. Where bonds are issued to finance Gateway project costs, how can we effectively mitigate risk to bondholders of future AV decreases in other project areas that could decrease incremental revenues within the District, such that there is insufficient increment to give Gateway its "fair share" distribution?

In order to address the issues identified above, and to preserve the greatest amount of flexibility for the City, staff recommends the Council proceed to split the existing Rock Creek District into separate Districts. In order to accomplish this (in accordance with K.S.A. 12-1771(h)), the City must provide the same notice and hearing as was required when the original district was established.

Related Statute/City Ordinance:	<i>K.S.A. 12-1770 et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA

City of Mission	Item Number:	1.
ACTION ITEM SUMMARY	Date:	October 9, 2019
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

The steps to accomplish the separation of the districts include:

- City Council adopts Resolution calling public hearing (October 16). The Public Hearing date must be not less than 30 days or more than 70 days following adoption of the Resolution
- Notice of public hearing must be given to the County, USD 512, and all property owners and occupants within District – sent via certified mail, return receipt requested
- Hold public hearing (November 18)
- City Council adopts Ordinance splitting area into separate districts (November 18)

A memo outlining the issues and considerations more thoroughly is included in the packet for your review and information.

CFAA CONSIDERATIONS/IMPACTS: NA

Related Statute/City Ordinance:	<i>K.S.A. 12-1770 et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA



MEMORANDUM

Date: October 4, 2019
To: Mayor and City Council
From: Laura Smith, City Administrator
RE: Division of Rock Creek TIF District

In 2006, the City established the Rock Creek TIF District (via Ordinance 1190 and as amended by Ordinance 1195). The District contained approximately 71 acres of property, which generally follows the Rock Creek Floodplain from Roe Boulevard to Lamar. The large district was created to aid redevelopment in areas that had been put into the 100-year floodplain just a few years earlier. The Rock Creek District included four (4) redevelopment project areas within the larger district, as illustrated by the map included as Exhibit A.

In 2009, the District was amended (Ordinance 1299) to include five redevelopment project areas. Areas 1, 3 and 4 remained as previously established, and within area 2, a separate redevelopment project area (2A), which encompassed the Capitol Federal property, was created.

The TIF Act provides that increment is computed on a district-wide basis. This law works where there is (1) a single project area within a district, or (2) multiple project areas, all of which have positive incremental assessed valuation (AV). However, when some project areas have negative incremental AV but others have positive incremental AV, those areas with positive increment are unable to be compensated until the entire district is generating positive increment.

Since its creation, the Rock Creek District has not experienced positive incremental AV as a whole in any budget year. However, there are certain redevelopment areas that have/are experiencing positive incremental AV. So, "why does this matter?"

The application of the TIF Act is inconsistent with the approach that is often taken when establishing individual project plans within a larger district. At least in Mission's case, the two approved projects plans within the Rock Creek District - Gateway and Capitol Federal - were approved with an assumption that they would be able to receive TIF incentives from positive increment generated specifically within their individual project areas. Currently, neither project could receive TIF revenues until the entire (71 acre) district started generating positive increment.

The table below illustrates the five (5) separate existing project areas, their base assessed value from 2006, the current assessed value and the increment generated (positive or negative). The areas are detailed in the map attached as Exhibit B.



MEMORANDUM

Project Area	Base Total Assessed Value	2019 Assessed Value	Incremental Assessed Value	Notes
1*	\$ 2,532,825	\$ 488,175	(\$2,044,650)	Gateway Project
2A*	\$ 49,045	\$ 257,501	\$208,456	CapFed Project
2	\$ 4,581,069	\$4,120,353	(\$460,716)	Roeland Drive to Nall
3	\$ 3,231,790	\$3,927,668	\$695,878	Nall to just west of Woodson, north of Martway (includes Mission Bowl and Mission Mart)
4	\$ 449,598	\$ 791,174	\$341,576	Area north and west of City Hall
District Totals	\$ 10,844,327	\$9,584,871	(\$1,259,456)	Total incremental assessed value within District has not yet been positive, so no incremental tax revenues distributed to date.

* Approved project plans for Project Area 1 (Gateway) and Project Area 2A (CapFed) only allocate increment generated within the respective project areas to payment of eligible project costs.

As we've taken steps to re-evaluate the Gateway Redevelopment Agreement, and started seriously exploring issuance of the Special Obligation (SO) bonds it contemplates, we have identified some issues which need to be addressed, including:

1. What is a fair way to allocate the future incremental property tax revenues generated by the Rock Creek District as between Gateway, CapFed and the remaining project areas?
2. Where bonds are issued to finance Gateway project costs, how can we effectively mitigate risk to bondholders of future AV decreases in other project areas that could decrease



MEMORANDUM

incremental revenues within the District, such that there is insufficient increment to give Gateway its "fair share" distribution?

In order to address the issues identified above, and to preserve the greatest amount of flexibility for the City, staff recommends the City Council proceed to split the existing Rock Creek District into separate Districts. In order to accomplish this (in accordance with K.S.A. 12-1771(h)), the City must provide the same notice and hearing as was required when the original district was established. The steps include:

- City Council adopts Resolution calling public hearing (October 16). The Public Hearing date must be not less than 30 days or more than 70 days following adoption of the Resolution
- Notice of public hearing must be given to the County, USD 512, and all property owners and occupants within District – sent via certified mail, return receipt requested
- Hold public hearing (November 18)
- City Council adopts Ordinance splitting area into separate districts (November 18)

In this amendment process, the County and School District are not given veto rights, and the base AV of each new district is equal to the base AV as of the date the original district was established (2006).

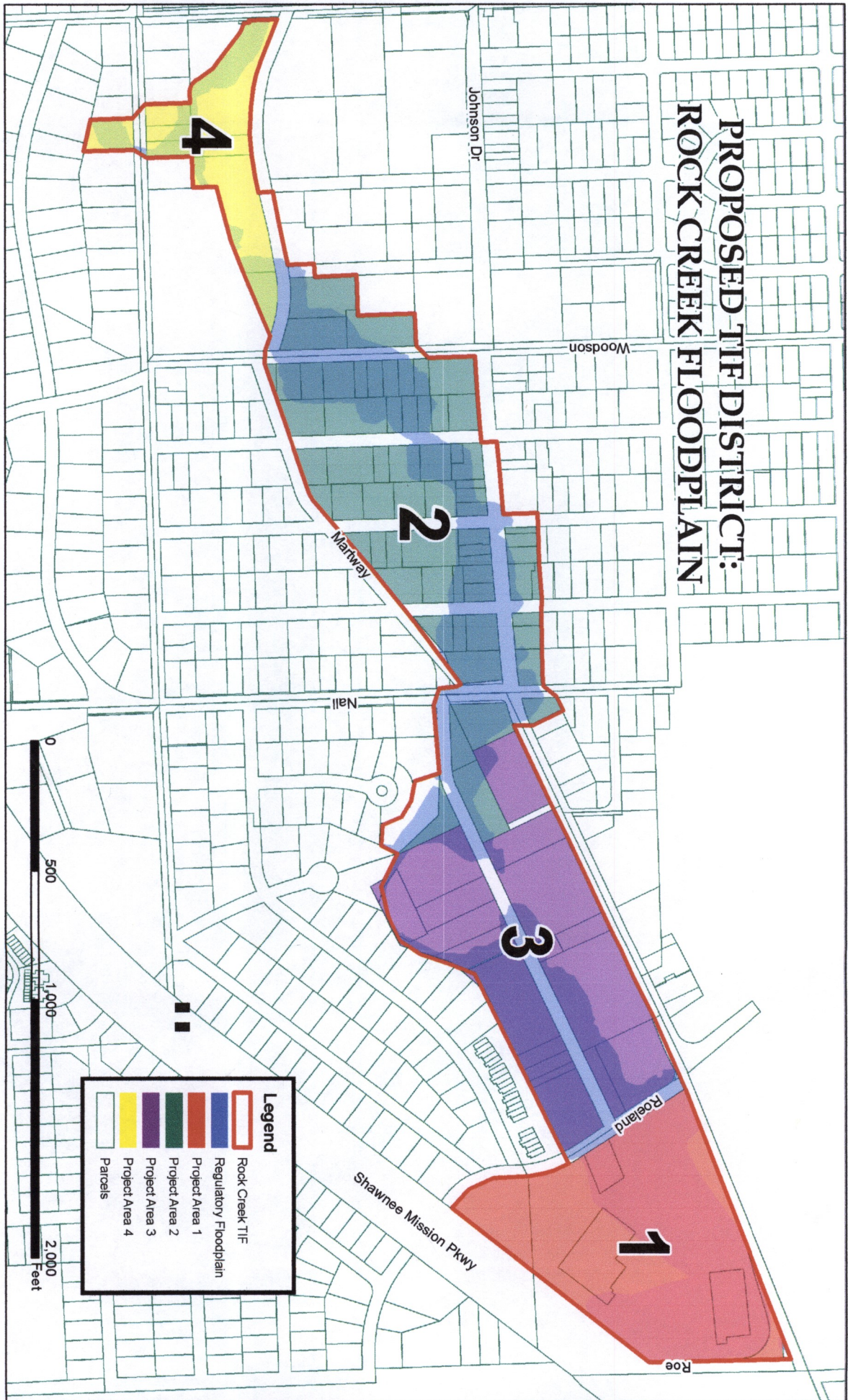
The advantages of this approach are as follows:

- Allows each Project Area/District to receive increment attributable only to activities within that geographic area.
- Consistent with business deal in approved project plans for Gateway and CapFed.
- Likely helps with marketing Gateway Bonds – less risk to investors related to increment from other project areas.
- Provides City Council with the opportunity to evaluate the necessity/value of such a large TIF District and remove certain portions entirely either at the November 18 meeting or at a later date.

These actions don't specifically benefit one property or project over another. Staff believes this is an appropriate step given the length of time that has transpired since the district was established in 2006. The Resolution to call a public hearing on Monday, November 18, 2019 has been drafted by the City's Bond Counsel, Gilmore & Bell and is included in the packet.

The legal descriptions which will be included as Exhibit B to the Resolution are being updated to reflect changes that have occurred since 2006 and will be finalized prior to distribution of the Council agenda packet on October 11, 2019.

EXHIBIT A
MAP OF ROCK CREEK REDEVELOPMENT DISTRICT



PROPOSED TIF DISTRICT:
ROCK CREEK FLOODPLAIN

Legend

- Rock Creek TIF
- Regulatory Floodplain
- Project Area 1
- Project Area 2
- Project Area 3
- Project Area 4
- Parcels

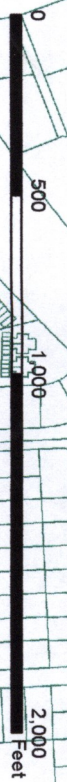
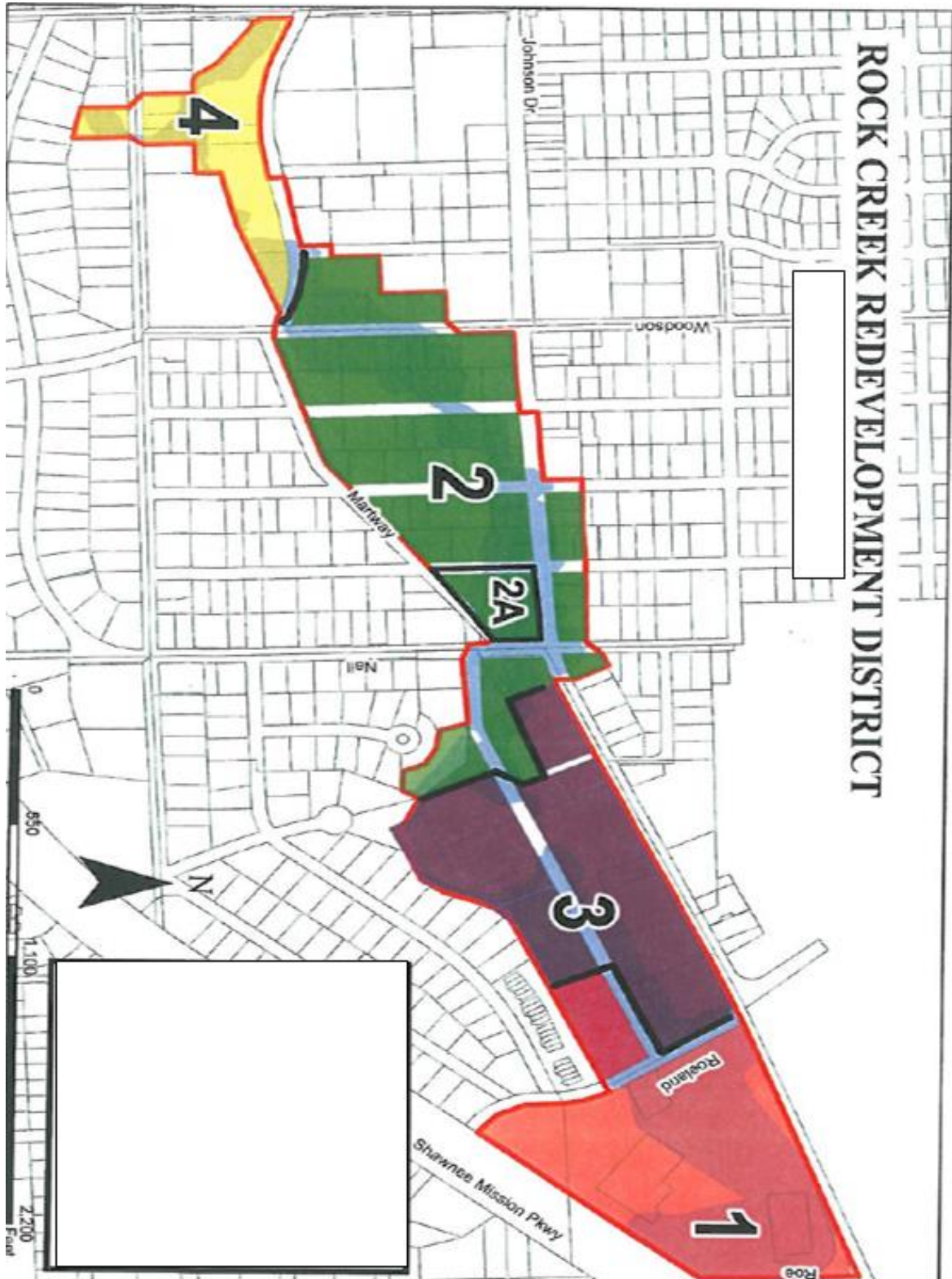


EXHIBIT B

MAP OF REDEVELOPMENT DISTRICTS



(Published in *The Legal Record* on October 22, 2019)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MISSION, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING REGARDING THE DIVISION OF THE ROCK CREEK REDEVELOPMENT DISTRICT INTO FIVE (5) REDEVELOPMENT DISTRICTS.

WHEREAS, the City of Mission, Kansas (the “City”) created a redevelopment district (the “Redevelopment District”) pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) and Ordinance No. 1190 passed by the City Council of the City (the “Governing Body”) on January 11, 2006, as amended by Ordinance No. 1195 passed by the Governing Body on February 8, 2006; and

WHEREAS, the City is considering the division of the Redevelopment District into five separate redevelopment districts pursuant to K.S.A. 12-1771(h); and

WHEREAS, the Governing Body desires to establish November 20, 2019 as the date for the public hearing to consider the division of the Redevelopment District into five (5) redevelopment districts and authorize dissemination of notice as required by the Act.

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

Section 1. Notice is hereby given that a public hearing will be held by the Governing Body to consider the division of the Redevelopment District into five (5) redevelopment districts in the City Council Chamber located in City Hall, 6090 Woodson, Mission, Kansas 66202, commencing at 7:00 p.m., or as soon thereafter as may be heard, on **November 18, 2019**.

Section 2. A map of the five (5) proposed redevelopment districts is attached hereto as *Exhibit A*. The legal descriptions of the five (5) proposed redevelopment districts are attached hereto as *Exhibit B*. Descriptions and maps of the proposed redevelopment districts are available for inspection at the office of the City Clerk, City Hall, 6090 Woodson, Mission, Kansas 66202, Monday through Friday (other than holidays) between 8:00 a.m. and 5:00 p.m.

Section 3. The district plans for the proposed redevelopment districts are described in a general manner as follows:

Rock Creek Redevelopment District No. 1 (Gateway). A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial or residential facilities, parking facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary sewers, water lines and all related expenses to redevelop and finance the project.

Rock Creek Redevelopment District No. 2. A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial and residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and refinance the redevelopment

project and all other associated public and private infrastructure.

Rock Creek Redevelopment District No. 2A (Capitol Federal). A redevelopment district containing one project area consisting of some or all of the following uses: an approximately 3,800 square foot commercial banking building and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and finance the project and all other associated public and private infrastructure.

Rock Creek Redevelopment District No. 3 (Mission Mart and Bowl). A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial or residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and finance the project and all other associated public and private infrastructure.

Rock Creek Redevelopment District No. 4. A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial and residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and refinance the redevelopment project and all other associated public and private infrastructure.

Section 4. The Governing Body will consider the findings necessary for the division of the Redevelopment District into the five (5) redevelopment districts after the conclusion of the public hearing.

Section 5. The City Clerk is hereby authorized and directed to publish this resolution once in the official city newspaper not less than one week or more than two weeks preceding the date set for the public hearing. The City Clerk is also authorized and directed to mail a copy of this resolution via certified mail, return receipt requested to the board of county commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment district, and to each owner and occupant of land within the Redevelopment District, not more than 10 days following the date of the adoption of this Resolution.

Section 6. The Mayor, City Administrator, City Clerk and other officials and employees of the City, including the City Attorney and Gilmore & Bell, P.C., Bond Counsel to the City, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this resolution.

Section 7. This Resolution shall become effective upon its adoption by the Governing Body.

[Balance of page intentionally left blank]

ADOPTED by the Governing Body on October 16, 2019.

SIGNED by the Mayor on October 16, 2019.

(SEAL)

Ronald E. Appletoft, Mayor

ATTEST:

Martha Sumrall, City Clerk

EXHIBIT A

MAP OF REDEVELOPMENT DISTRICTS

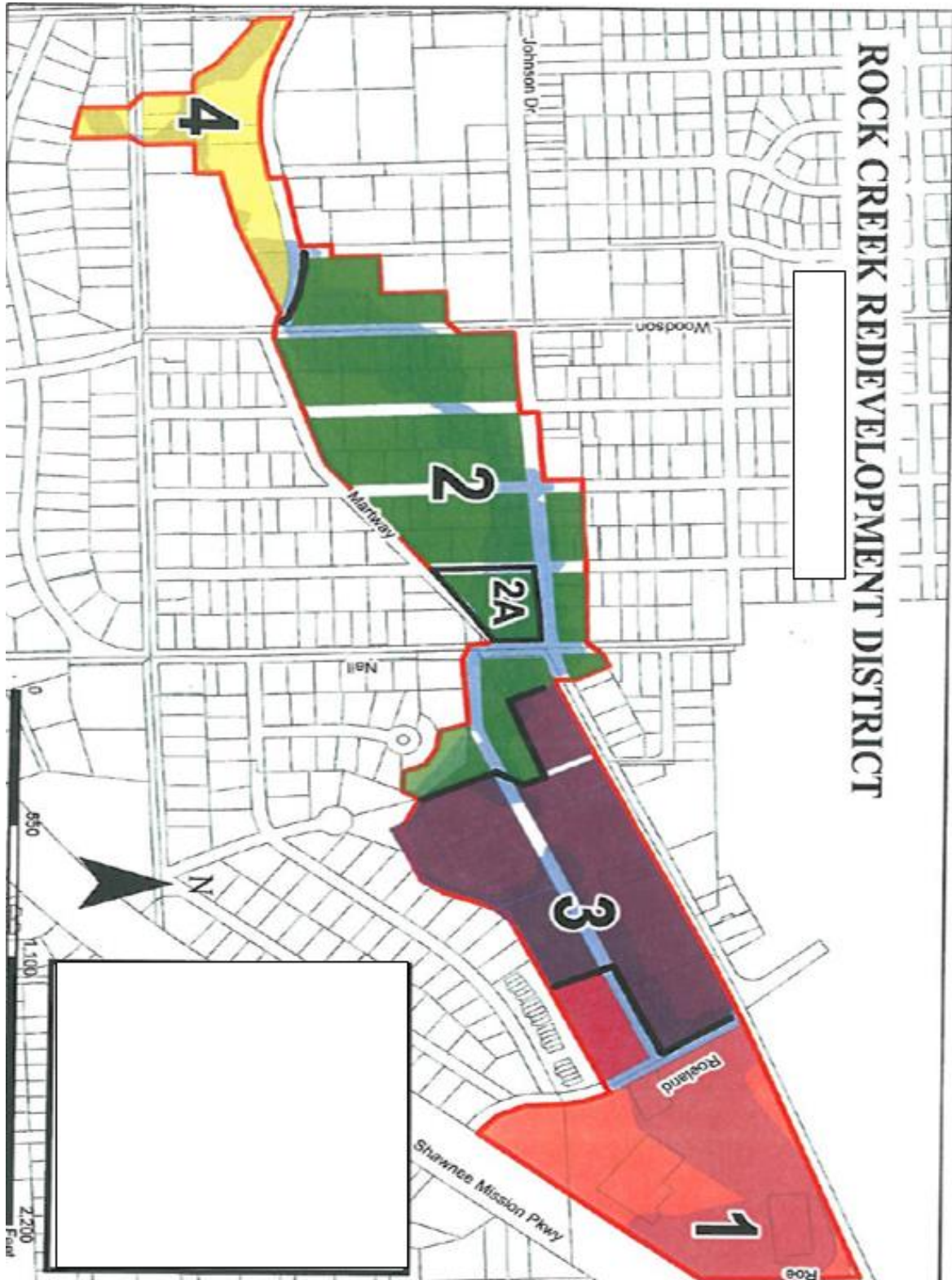


EXHIBIT B

LEGAL DESCRIPTIONS OF REDEVELOPMENT DISTRICTS

Legal description of Redevelopment District 1 (Gateway):

[INSERT LEGAL]

Legal description of Redevelopment District 2:

[INSERT LEGAL]

Legal description of Redevelopment District 2A (Capitol Federal):

[INSERT LEGAL]

Legal description of Redevelopment District 3 (Mission Mart and Bowl):

[INSERT LEGAL]

Legal description of Redevelopment District 4:

[INSERT LEGAL]

City of Mission	Item Number:	2.
ACTION ITEM SUMMARY	Date:	October 9, 2019
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.

RECOMMENDATION: Approve the Resolution Approving the First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.

DETAILS: In October 2017, the City approved the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Now, as a result of the project's evolution over the past two years, the City and its consultant team have negotiated a proposed "First Amendment" to the 2017 Redevelopment Agreement for the City Council's consideration.

The City Team believes that this Amendment serves a crucial role in reconciling the current project to the 2017 Agreement, and that Council consideration of it should therefore precede any other Council actions concerning the issuance of Special Obligation Bonds to benefit the project.

Rather than building the project in separate, distinct phases as contemplated in the 2017 Redevelopment Agreement, the schedule is now being driven primarily by Cinergy and their desire to open for the summer/fall movie season in 2020. The construction of this 90,000 sq. ft. entertainment facility, also drives the need for construction of the parking structure sooner in the process in order to accommodate the Cinergy patrons.

Over the last several months the City's consultant team, which includes our independent financial advisor, land use attorney, and bond counsel, have been working with the Developer's team to address the steps necessary to recommend an amendment that aligns the underlying goals and assumptions included in the 2017 Redevelopment Agreement with the realities of the 2019 project. A memo is included in the packet which provides background information on both the 2017 Agreement and 2019 Amendment, and on the presentation to occur at the October 9, 2019 Finance & Administration Committee meeting.

In addition to detailed discussion regarding the amendment, the City's team will also provide the following:

- A project status update
- Review and recap of the financial benefits anticipated for the City under the amended agreement
- Potential next steps related to issuance of special obligation bonds

CFAA CONSIDERATIONS/IMPACTS: NA

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MISSION, KANSAS, APPROVING THE FIRST AMENDMENT TO THE THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE MISSION GATEWAY PROJECT

WHEREAS, the City of Mission, Kansas and Aryeh Realty, LLC (“Developer”) entered into that certain Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project, dated as of October 18, 2017 (“Agreement”); and

WHEREAS, the Developer has requested certain amendments to the Agreement, and pursuant thereto, the City Staff and Developer have prepared a First Amendment to the Agreement for consideration by the Governing Body; and

WHEREAS, by at least a majority vote of the City Council, the aforesaid First Amendment was approved.

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

1. That “First Amendment to the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project”, on file with the City Clerk, is hereby approved; and the Mayor and City Clerk are hereby authorized to execute same on behalf of the City of Mission, Kansas.

THIS RESOLUTION IS ADOPTED by the Governing Body of the City of Mission, Kansas, this ____ day of _____, 2019.

CITY OF MISSION, KANSAS

By: _____
Ronald E. Appletoft, Mayor

ATTEST:

By: _____
Martha Sumrall, City Clerk

APPROVED AS TO FORM ONLY:

By: _____
David K. Martin, City Attorney



MEMORANDUM

Date: October 7, 2019
To: Mayor and City Councilmembers
From: Laura Smith, City Administrator
RE: Mission Gateway Redevelopment Project

In October 2017, the City approved the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Now, as a result of the project's evolution over the past two years, the City and its consultant team have negotiated a proposed "First Amendment" to the 2017 Redevelopment Agreement for the City Council's consideration. The City Team believes that this Amendment serves a crucial role in reconciling the current project to the 2017 Agreement, and that Council consideration of it should therefore precede any other Council actions concerning the issuance of Special Obligation Bonds to benefit the project. This memo provides background information on both the 2017 Agreement and 2019 Amendment, and on the presentation to occur at this Wednesday's Committee meeting.

The 2017 Agreement negotiations were based on the plan and development schedule anticipated and approved at that time. A copy of the current agreement is included in the packet for your review and information. Copies of memos provided in association with the agreement's approval in 2017 are also included for historical reference.

The key aspects and assumptions of the 2017 deal can be characterized as follows:

- Developer demonstrated a legitimate need for City participation in the project in order for it to be financially viable.
- The project would receive 100% of the project area property TIF over the maximum 20-year term.
- The project would receive 55% of the City general sales tax collections within the Gateway project area over the 20-year TIF term (City retains 45%).
- The project would receive 8% of the City's transient guest tax collections within the project area over the 20-year TIF term (City retains the remaining 1%)
- The project would receive 100% of a 1% CID fee over the maximum 22-year term.
- The project would receive an Industrial Revenue Bond (IRB)-driven sales tax exemption on Gateway construction materials.

The 2017 Agreement also included the following components:

- A phased project construction approach, beginning with the residential over small shop retail at the corner of Johnson Drive and Roeland Drive
- Anticipated issuance of Special Obligation Bonds (both TIF and CID)
- Developer access to TIF and CID "tails" - the surplus revenues after bonds are paid in full.



MEMORANDUM

Gateway Redevelopment Agreement Amendment
October 7, 2019

Construction on Phase I, as identified in the 2017 agreement, began in the fall of 2018. In December 2018, the Developer secured a lease with Cinergy sooner than originally anticipated, and the construction schedule for the entire project had to be re-evaluated.

Rather than building the project in separate, distinct phases as contemplated in the 2017 Redevelopment Agreement, the schedule is now being driven primarily by Cinergy and their desire to open for the summer/fall movie season in 2020. The construction of this 90,000 sq. ft. entertainment facility, also drives the need for construction of the parking structure sooner in the process in order to accommodate the Cinergy patrons.

With the current project parameters, we have known for some time that an amendment to the Redevelopment Agreement would be necessary. Over the last several months the City's consultant team, which includes our independent financial advisor, land use attorney, and bond counsel, have been working with the Developer's team to address the steps necessary to recommend an amendment that aligns the underlying goals and assumptions included in the 2017 Redevelopment Agreement with the realities of the 2019 project.

The "deal points" themselves have not been the subject of our negotiations as the developer has not changed any of the key components of the project. We are simply dealing with new construction timelines schedules that do not align with those included in the 2017 Redevelopment Agreement. As such, the City's team has focused exclusively on how to maintain the benefits and protections provided by the 2017 agreement.

In addition to changes to the project's construction schedule, the Developer has been working for several months to secure permanent financing for the project. The amendments to the Redevelopment Agreement address conditions for the issuance and distribution of the Special Obligation bond proceeds contemplated since 2017, and incorporates references to the private lenders. Past agreements have aligned only the responsibilities of the City and the Developer, the 2019 amendment brings the private lenders into this partnership.

The changes to the Third Amended and Restated Redevelopment Agreement will be discussed in detail during our Committee meeting on October 9. The primary revisions include:

- Elimination of the phasing schedule contemplated in the 2017 agreement (Section 2.02 - Development Schedule) such that the project will be constructed in a single construction phase and completed no later than December 31, 2021. This change accelerates the completion timeline for the entire project by 12 months.



MEMORANDUM

Gateway Redevelopment Agreement Amendment
October 7, 2019

- Removal of all references to a CID Special Obligation Bond Issue. The Developer's Team now proposes to issue one series of Special Obligation Bonds that will be repaid with both TIF and CID revenues.
- The project budget has been updated to reflect current costs, and to include a "Priority Approved TIF Eligible Project Costs" category. This specifically outlines what TIF bond proceeds may be spent on and ensures that the bond proceeds are used for "hard" costs.
- Changes to the conditions precedent for issuance of bonds, and a new section outlining conditions precedent for distribution of net bond proceeds. These changes are the most important among the revisions recommended as they serve to align the Council's expectations for completion of significant portions of the project with availability of the City incentives.

All members of the City's consultant team will be present to review and answer questions regarding the recommended First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. In addition to a detailed explanation of the amendment, the City's team will provide the following:

- A project status update (Brian Scott)
- Review and recap of the financial benefits anticipated for the City under the amended agreement (Bruce Kimmel)
- Potential next steps related to issuance of special obligation bonds (Gary Anderson)

Please do not hesitate to contact me with questions in advance of Wednesday's Committee meeting or should there be additional background information you might require.

**FIRST AMENDMENT TO
THIRD AMENDED AND RESTATED REDEVELOPMENT
AGREEMENT FOR THE MISSION GATEWAY PROJECT**

THIS FIRST AMENDMENT TO THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE MISSION GATEWAY PROJECT (this “Amendment”), is made and entered into as of _____, 2019 (the “Effective Date”), 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, a Delaware limited liability company (and its lawful successors and assigns, the “Developer”).

RECITALS

A. The City and the Developer entered into that certain Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project, dated as of October 18, 2017 (the “Agreement”). Capitalized terms used and not otherwise defined in this Amendment will have the meanings provided in the Agreement.

B. Pursuant to the terms of the Agreement, the Project was intended to be completed in three separate phases, with a start date of no later than October 31, 2018, and a final completion date of no later than December 31, 2022. The Developer commenced construction prior to October 31, 2018, but now wants to streamline construction of the Project by eliminating the separate phases. Instead of three phases to conclude on December 31, 2022, the Developer proposes to construct the same Project in a single phase, with a completion date of December 31, 2021.

C. The Developer has asked the City to amend certain provisions of the Agreement to assist the Developer in commencing and completing the Project in a single phase.

D. The City and the Developer now desire to enter into this Amendment to memorialize their agreement with respect to the foregoing matters and amend the Agreement in accordance with Section 10.05 thereof.

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

1. Section 1.01 – Definitions of Words and Terms.

a) The definitions for “Master Funding Agreement” and “TIF Eligible Project Costs”, set forth in Section 1.01 of the Agreement or elsewhere in the Agreement are hereby deleted in their entirety and replaced with the following:

“**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 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.”

“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 Real Estate Taxes, Captured Sales Taxes, and CID Sales Tax revenues; 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.

b) Section 1.01 of the Agreement is hereby amended to add the following defined terms:

“Priority Approved TIF Eligible Project Costs” shall mean the TIF Eligible Project Costs identified as “Priority Approved TIF Eligible Project Costs” on Exhibit B, totaling approximately \$34,000,000.00.

2. CID Bonds. The parties have agreed that no CID Bonds will be issued in connection with the Project, and all references thereto or use of the proceeds therefrom is hereby stricken from this Agreement. The definition of “CID Bonds” is hereby stricken.

3. Section 2.02 – Development Schedule; Replacement of Exhibit B-1.

Section 2.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

“Section 2.02 Development Schedule The Developer has already commenced development activities and will continuously prosecute and substantially complete same in a single construction phase no later than December 31, 2021, as 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 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. 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 the Project no later than December 31, 2021, unless such date is extended in writing by the City. The approval of the City as required in this Section shall 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.”

4. Exhibit B-1 to the Agreement is hereby deleted in its entirety and replaced with Exhibit B-1 attached hereto and incorporated herein by this reference as though fully set

forth in this Section 2. Exhibit B-1 attached to this Amendment, and the Development Schedule set forth therein, shall constitute Exhibit B-1 and the Development Schedule for all purposes under the Agreement.

5. Section 2.03 – Project Budget; Replacement of Exhibit B.

Section 2.03 of the Agreement is hereby deleted in its entirety and replaced with the following:

“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, CID Eligible Project Costs, and Priority Approved TIF 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.

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 TIF Cap plus any CID Sales Tax generated by the Project, 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 completion of the Project.”

6. Exhibit B to the Agreement is hereby deleted in its entirety and replaced with Exhibit B attached hereto and incorporated herein by this reference as though fully set forth in this Section 2. Exhibit B attached to this Amendment, and the Budget set forth therein, shall constitute Exhibit B and the Budget for all purposes under the Agreement.

7. Section 2.05 is hereby deleted in its entirety and replaced with the following:

“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.

8. Section 3.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

“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 acceptable to the City, the Developer Project Work up to the amount of the Project’s private improvements’ costs, less the Incentive Funding, 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 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 bonds, the Developer Financing loan shall be closed and funded to the satisfaction of the City.

The Developer represents and warrants to the City that, to the best of its knowledge, the Developer Financing, 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.”

9. Section 3.03 of the Agreement is hereby deleted in its entirety and replaced with the following:

“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 one percent (1%) 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.

10. Section 3.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

“Section 3.04 Bond Issuance; Conditions and Priority of Disbursement of Net Bond Proceeds

A. Bond Issuance. 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 Priority Approved TIF Eligible Project Costs. 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**.

B. Cooperation. The parties shall reasonably cooperate to achieve bond issuances that will generate a portion of the Incentive Funding in a manner and time reasonably sufficient to facilitate completion of the Project. All issuances shall be issued in the City’s sole discretion after consultation with its financial consultants and advisors.

C. Conditions Precedent for Issuance of Bonds.

1. The issuance of the TIF Bonds shall be conditioned upon:

- (a) The Developer shall not be in default of this Agreement beyond any applicable cure period.
- (b) Evidence of Developer Financing and Developer Equity as required by **Section 3.01**.
- (c) Construction contracts, construction permits and notices to proceed for the entertainment facility currently known as “Cinergy” and parking structure portions of the Developer’s Project Work.
- (d) Evidence of compliance with the requirements of **Section 2.04(B)(2)**.
- (e) A current Project Budget that demonstrates that all of the Developer’s Project Work 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.
- (f) A proposed schedule for the completion of the Project (as may be subject to change as provided herein), to the extent it is inconsistent or noncompliant with Exhibit B-1.

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

1. Provide written notice to Developer that **Section 3.04(C)** 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 City's commitment to issue the applicable issuance of TIF Bonds will become irrevocable, subject to satisfactory underwriting and the terms of this Agreement.

E. Conditions Precedent for Distribution of Bond Proceeds. The distribution of Bond Proceeds shall be conditioned upon (the "Disbursement Conditions"):

- (a) Receipt by the Developer of all Zoning Approvals, except that additional approvals may be necessary for the Food Hall component of the Project.
- (b) Payment by Developer of at least 50% of the costs and completion of at least 50% of the construction of the "Cinergy" portion of the Project, as certified by tenant's architect.
- (c) Payment by Developer of at least 25% of the costs and completion of at least 25% of the construction of the Project parking garage, as certified by Developer's architect.
- (d) Proof that funding from The Carlyle Group in the minimum amount of \$50 Million and from Bank OZK in the minimum amount of \$13 Million has been released to Developer and utilized in the Project.
- (e) A Certification of Expenditure for each item to be paid, in accordance with **Section 3.06**.
- (f) The Master Funding Agreement is executed by the parties thereto.

F. 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 and the Master Funding Agreement and shall be disbursed in the following order of priority (i) to pay any outstanding Eligible Public Costs; and (ii) then to pay the Priority Approved TIF Eligible Project Costs, all in accordance with the Bond Documents. 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 in an amount equal to \$7 Million will be disbursed (the "Initial Disbursement"). Following the Initial Disbursement, 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.

G. 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"

11. Subsection (B) of Section 3.10, Limitation on Reimbursement from Net Bond Proceeds, is hereby deleted in its entirety and replaced with the following:

“B. No costs other than Priority Approved TIF Eligible Project Costs shall be paid or reimbursed from the Net Bond Proceeds; provided, however, that total reimbursements of potential Project Budget categories of Priority Approved TIF Eligible Project Costs may be moved to other Project Budget categories of Priority Approved TIF Eligible Project Costs so long as the amount of each category will not exceed 115% of the total amount specified in the Project Budget for each budget category.”

12. Section 5.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

“**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.”

13. **Section 10.13, Notice**, is hereby amended to replace Evan E. Fitts at the Polsinelli address with Korb K. Maxwell.

14. **Replacement of Exhibit C – Bond Schedule**. Exhibit C to the Agreement is hereby deleted in its entirety and replaced with Exhibit C attached hereto and incorporated herein by this reference as though fully set forth in this Section 6. Exhibit C attached to this Amendment, and the Bond Schedule set forth therein, shall constitute Exhibit C and the Bond Schedule for all purposes under the Agreement.**15.**

15. **Counterparts**. This Amendment may be executed in several counterparts. All counterparts so executed shall constitute one agreement and shall be binding on all parties, even though all the parties did not sign the original or the same counterpart signature page. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Amendment.

16. **Amendment**. Except as specifically amended hereby, the Agreement remains in full force and effect and is hereby ratified by the parties hereto. In the event that any of the terms or conditions of the Agreement conflict with this Amendment, the terms and conditions of this Amendment shall control.

17. **Governing Law**. This Amendment shall be governed by and construed in accordance with the laws of the State of Kansas.

[Remainder of Page Intentionally Left Blank. Signature Pages follow.]

EXHIBIT B

Project Budget

See attached

Project Budget (2019 Update)					
	Development Budget	Approved Eligible Project Costs	TIF Eligible Project Costs	Priority Approved TIF Eligible Costs	CID Eligible Project Costs
Land, Demolition & Predevelopment Costs					
Property Acquisition	\$7,550,000	\$7,550,000	\$7,550,000	\$5,319,591	\$7,550,000
Tenant Buyouts and Relocation	\$512,568	\$512,568	\$512,568	\$512,568	\$512,568
Demolition / Earthwork	\$2,534,838	\$2,534,838	\$2,534,838	\$2,534,838	\$2,534,838
Architectural / Survey / Site Design	\$7,420,005	\$0	\$0	\$0	\$0
Engineering	\$2,944,401	\$0	\$0	\$0	\$0
Legal	\$1,861,125	\$0	\$0	\$0	\$0
Real Estate Taxes	\$1,861,592	\$0	\$0	\$0	\$0
Interest on Past Loans	\$5,244,330	\$0	\$0	\$0	\$0
Closing Costs / Mortgage Tax on Past Loans	\$1,962,642	\$0	\$0	\$0	\$0
Prior Contractor General Conditions / Fees / Other	\$1,285,255	\$0	\$0	\$0	\$0
Marketing / Promotions	\$580,009	\$0	\$0	\$0	\$0
Miscellaneous 3rd Party Expenses	\$820,238	\$0	\$0	\$0	\$0
Developer- General Conditions	\$77,923	\$0	\$0	\$0	\$0
Developer- Miscellaneous	\$485,862	\$0	\$0	\$0	\$0
Developer- Project Management / Coordination	\$976,641	\$0	\$0	\$0	\$0
Developer - Travel / Lodging / Meals	\$461,140	\$0	\$0	\$0	\$0
Developer- Meals & Entertainment	\$20,904	\$0	\$0	\$0	\$0
Developer - Allocated Overhead	\$651,550	\$0	\$0	\$0	\$0
Developer- Other Legacy less Minimum Rents	\$612,329	\$0	\$0	\$0	\$0
Total Land Costs	\$37,863,352	\$10,597,406	\$10,597,406	\$8,366,997	\$10,597,406
Site Work, Infrastructure & Parking					
Hard Costs- Parking Garage Spaces	\$16,000,000	\$16,000,000	\$16,000,000	\$16,000,000	\$16,000,000
Sitework	\$4,902,267	\$4,902,267	\$4,902,267	\$4,902,267	\$4,902,267
Offsite	\$1,106,000	\$1,106,000	\$1,106,000	\$1,106,000	\$1,106,000
Total Site Work	\$22,008,267	\$22,008,267	\$22,008,267	\$22,008,267	\$22,008,267
Hard Costs					
Hard Costs Retail (Roeland)	\$5,207,612	\$5,207,612	\$560,516		\$5,207,612
Hard Costs Retail (Johnson)	\$2,792,388	\$2,792,388	\$300,556		\$2,792,388
Hard Costs Entertainment/Retail	\$25,000,000	\$25,000,000	\$2,690,848		\$25,000,000
Hard Costs Hotel (includes Restaurant & Spa)	\$22,500,000	\$22,500,000	\$2,421,764		\$22,500,000
Hard Costs Residential	\$25,807,500	\$25,807,500	\$2,777,763		\$25,807,500
Hard Costs Office	\$11,600,000	\$11,600,000	\$1,248,554		\$11,600,000
Payment & Performance Bonds	\$901,114	\$901,114	\$180,379		\$901,114
Insurance/Builders Risk	\$1,710,756	\$1,710,756	\$451,369		\$1,710,756
General Contractor Fee	\$2,750,000	\$2,750,000	\$725,566		\$2,750,000
Tenant Improvements	\$19,682,833	\$19,682,833	\$0		\$19,682,833
Contingency	\$5,903,582	\$5,903,582	\$1,557,613		\$5,903,582
Total Hard Costs	\$123,855,784	\$123,855,784	\$12,914,927	\$0	\$123,855,784
Soft Costs					
Architecture/Engineering Services	\$6,498,120	\$3,248,652	\$1,300,751		\$3,248,652
Legal	\$1,427,500	\$1,427,500	\$285,748		\$1,427,500
Platting	\$0	\$0	\$0		\$0
Civil Engineer (includes geo-tech and survey)	\$382,000	\$382,000	\$91,479		\$382,000
Testing & Special Inspections	\$600,000	\$600,000	\$120,104		\$600,000
Real Estate Taxes	\$5,463,545	\$950,000	\$0	\$0	\$950,000
Stormwater Assessments	\$4,645,108	\$4,645,108	\$4,645,108	\$3,624,736	\$0
Residential Marketing and FF&E	\$260,000	\$60,000	\$0		\$60,000
Project Branding & Marketing	\$500,000	\$500,000	\$0		\$500,000
Farmers Interest	\$0	\$0	\$0		\$0
Hotel Pre-Opening	\$200,000	\$200,000	\$0		\$200,000
Hotel Supplies	\$0	\$0	\$0		\$0
Hotel FFE	\$5,075,000	\$5,275,000	\$0		\$5,275,000
Hotel Operator Technical Services Fee	\$100,000	\$100,000	\$0		\$100,000
Development Fee	\$5,332,006	\$2,000,000	\$0		\$2,000,000
Project Staffing	\$1,550,000	\$0	\$0		\$0
Residential Staffing	\$55,000	\$55,000	\$0		\$55,000
Permit & Fees	\$395,000	\$395,000	\$79,069		\$395,000
Accounting (Audit, etc.)	\$150,000	\$150,000	\$30,026		\$150,000
Developer Reimbursements	\$415,053	\$0	\$0		\$0
Leasing Commissions	\$2,250,000	\$2,250,000	\$0		\$2,250,000
Soft Cost Contingency	\$2,559,920	\$750,000	\$150,130		\$750,000
Total Soft Costs	\$37,858,252	\$22,988,260	\$6,702,414	\$3,624,736	\$16,343,152
Construction Loan Closing Cost					
Mortgage Broker Fee	\$1,000,000	\$1,000,000	\$200,201		\$1,000,000
Bank Fee	\$1,920,000	\$1,920,000	\$384,385		\$1,920,000
Title Insurance	\$253,605	\$253,605	\$50,772		\$253,605
Mortgage Recording Tax	\$0	\$0	\$0		\$0
Legal (Owner and Lender)	\$1,518,710	\$1,518,710	\$304,047		\$1,518,710
Construction Monitoring	\$125,000	\$125,000	\$25,025		\$125,000
3rd Parties	\$253,700	\$253,700	\$50,791		\$253,700
Construction Interest Reserve	\$21,725,000	\$4,200,000	\$4,200,000		\$4,200,000
Bond Payment Reserve	\$0	\$0	\$0		\$0
Total Financing Costs	\$26,796,015	\$9,271,015	\$5,215,221	\$0	\$9,271,015
Totals:	\$248,381,670	\$188,720,731	\$57,438,235	\$34,000,000	\$184,075,624

EXHIBIT B-1

Development Schedule

- Cinergy – Complete construction no later than December 31, 2020
- Parking Garage – Complete construction no later than December 31, 2020
- Residential/Small Shop Retail – Complete construction no later than June 30, 2021
- Hotel – Complete construction no later than September 30, 2021
- Office – Complete construction no later than December 31, 2021
- Food Hall – Complete construction no later than December 31, 2021

EXHIBIT C

Bond Schedule

**THIRD AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT
FOR THE
MISSION GATEWAY PROJECT**

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THIS THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into as of the 18 day of Oct, 2017 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**”), amends and supersedes in its entirety that certain “Second Amended and Restated Redevelopment Agreement for the Gateway Retail District”, effective February 11, 2013.

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 “**Redevelopment District**”).

C. On January 11, 2006, the City adopted Ordinance 1190, establishing a redevelopment district and designating redevelopment project areas for the 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. The City and The Gateway Developers, LLC, the original developer (“**Original Developer**”) executed a certain Redevelopment Agreement dated June 8, 2006 setting forth certain terms and conditions of development within the Redevelopment District (the “**Original Development Agreement**”).

F. On September 13, 2006, the City adopted Ordinance 1210, approving a TIF redevelopment project plan within the Redevelopment District (the “**Original Project Plan**”).

G. On December 13, 2006, the City adopted Ordinance 1217, approving a transportation development district (“**TDD**”) for a portion of the Redevelopment District pursuant to K.S.A. 12-17,141 *et seq.*, as amended (the “**TDD Act**”).

H. On January 23, 2008, the City adopted Ordinance 1255 approving an amended TIF redevelopment project plan which amended and replaced the Original Project Plan (the “**First Amended Project Plan**”), and the City and the Original Developer executed a certain Amended and Restated Redevelopment Agreement dated January 23, 2008 which amended and replaced the Original Development Agreement (the “**Amended Development Agreement**”).

I. On January 16, 2013, the City adopted Ordinance No. 1374 approving an amended TIF redevelopment project plan which amended and replaced the Original Project Plan and the First Amended Project Plan, and the City and the Original Developer executed a certain Second Amended and Restated Redevelopment Agreement dated February 11, 2013, which amended and

replaced the Amended Development Agreement (the “**Second Amended Development Agreement**”).

J. On or about June 3, 2016, the Original Developer conveyed fee simple title to the Redevelopment District to Developer.

K. On or about November 20, 2015, the Original Developer assigned its right, title and interest in and to the Second Amended Development Agreement to Developer.

L. On or about March 7, 2017, the Developer filed for approval by the City, a certain Third Amended Redevelopment Project Plan, which Plan was subsequently withdrawn by the Developer. Developer has filed for approval by the City, after public notice and hearing, a certain Fourth Amended Redevelopment Project Plan to amend and replace the Second Amended Project Plan (“**Project Plan**”) for the redevelopment of the area within the Redevelopment District designated in Ordinance 1195 as Project Area 1, as legally described on **Exhibit A** attached hereto (the “**Property**”) and redevelopment of the Property as a mixed-use project consisting of retail, office, hotel and residential uses.

N. The Project Plan includes a detailed 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.

O. 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.

P. 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**”).

Q. 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**”).

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

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 proceeds governing the issuance of the TIF Bonds, CID 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 Taxes shall not include any taxes 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 Bonds” means bonds issued by the City pursuant to the CID Act and in accordance with this Agreement, payable from the CID Sales Tax.

“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 Fund” shall have the meaning set forth in **Section 3.03**.

“**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, CID 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**.

“**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(A)**.

“**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 Thomas J. Valenti, Evan Fitts, 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 between the Developer, the City, Developer’s primary lender, the trustee acting in connection with the bonds to be issued under this Agreement and an escrow agent, 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 or CID 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 or CID Sales Tax 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 Planning Department.

“Special Obligation” means any bonds that are backed solely by the revenue streams for which they are issued and are not otherwise secured by the full-faith and credit of the City.

“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. 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 TIF Sales Tax Bonds and TIF Property Tax Bonds collectively.

“**TIF Cap**” means the sum of Captured Real Estate Taxes, Captured Sales Taxes and TGT, in the amount not to exceed the amount of TIF Eligible Project Costs as set forth on **Exhibit B** (plus any interest or private financing costs contemplated in the definition of TIF Eligible Project Costs), 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 Real Estate Taxes and Captured Sales Taxes. 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 Sales Tax Bonds**” means bonds issued by the City pursuant to the TIF Act and in accordance with this Agreement, payable from Captured Sales Tax.

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

“**TIF Property Tax Bonds**” means bonds issued by the City pursuant to the TIF Act and in accordance with this Agreement, payable from the Captured Real Estate Taxes.

“**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 Subject to the approval of the Project Plan, 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 Developer intends to develop the Project in three (3) phases as follows:

A. **Phase 1.** The first phase of the Project is proposed to include: (i) construction of approximately 55,594 square feet of “small shop” commercial or restaurant uses; and (ii) construction of approximately 168 apartment units; (iii) construction of related site work; and (iv) construction of surface parking sufficient for such uses pursuant to the City’s applicable ordinances (collectively referred to herein as “**Phase 1**”).

B. **Phase 2.** The second phase of the Project is proposed to include: (i) construction of a parking garage serving the entirety of the Project; and (ii) construction of an approximately 200-room hotel including a restaurant consisting of approximately 15,624 square feet (collectively referred to herein as “**Phase 2**”)

C. **Phase 3.** The third phase of the Project is proposed to include construction of approximately 123,685 square feet of junior-anchor/”big box” commercial retail space, which may also include “small-shop” commercial or restaurants as tenants are identified, as well as approximately 75,000 square feet of office uses (referred to herein as “**Phase 3**”).

Subject to **Section 2.09**, the Developer shall commence Phase 1 development activities no later than October 31, 2018, continuously prosecute and substantially complete same no later than April 30, 2020, pursuant to the Development Schedule attached hereto as Exhibit B-1 (the “**Development Schedule**”). Construction of Phase 2 and Phase 3 may occur at the discretion of the Developer, provided that the Developer hereby acknowledges that the availability of TIF Bonds and CID Bonds will be subject to the conditions precedent set forth in Section 3.04(C) hereof. And provided, further, that in the event construction of Phase 2 or 3 is not commenced on or before December 31, 2020, it will be deemed for the purposes of this Agreement that Phase 2 and Phase 3 will not be constructed, and the provisions for failure to construct Phase 2 and Phase 3 herein will apply. Notwithstanding the foregoing, the Developer shall use commercially reasonable efforts to promptly complete construction of the Project. For purposes hereof, the Developer shall be deemed to have commenced development activities or construction upon (i) as to Phase 1, the pouring of footings for the proposed retail/multiple family residential portions of Phase 1 and (ii) as to Phase 2 or Phase 3, the pouring of footings for the parking garage of Phase 2 of the Project. The parties recognize and agree that the Development Schedule is an estimated

schedule, subject to change based on market and other conditions beyond the control of Developer; provided, however, that the availability of Developer Financing shall not excuse performance of the Development Schedule. The Development Schedule is subject to further change and/or modification, provided that any 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 the Phase 1 no later than April 30, 2020, unless such date is extended in writing by the City. The approval of the City as required in this Section shall 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.

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 TIF Cap plus any CID Sales Tax generated by the Project, subject to the terms of this Agreement (the "**Incentive Funding**"). Provided, however, that in the event construction of Phase 2 or Phase 3 is not timely commenced, the total Incentive Funding shall be reduced to no more than \$13,300,000 (from CID and TIF), anything to the contrary in this Agreement notwithstanding, it being acknowledged by Developer that the City's willingness to provide the full Incentive Funding was predicated on completion 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 accordance with the Project Plan and Zoning Approvals.

2. Developer represents that Developer shall retain a qualified contractor after a competitive selection process to serve as general contractor for the Project and that such 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 completion by the Developer of the Developer Project Work in accordance with this Agreement.

Section 2.05 Plan Approval; Additional Redevelopment District Development Approval Prior to the execution of this Agreement, the City approved the Site Plans and Zoning Approvals. 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 Building, Subdivision Codes; Architect's Report; LEED Qualification 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. Developer shall submit in a form reasonably acceptable to the City a report by a licensed architect describing improvements and features of the Project that qualify for LEED certification, but the Developer shall not be required to obtain any form of LEED certification for the Project.

Section 2.08 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 2.09 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, lack of access to capital due to a national or global recession or financial crisis, destruction by fire or other casualty, strike, shortage of material, 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 2.10 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 2.11 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 2.12 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 2.13 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, church, nursing home, library or hospital.

ARTICLE III

PROJECT FINANCING

Section 3.01 Initial Capital

A. **Developer Financing.** 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 a signed commitment letter to finance Phase 2 of the Developer Project Work up to the amount of the Private Improvement Costs, less the Incentive Funding, and less any equity contributions made or represented to be made by the Developer (“**Developer Equity**”). The proceeds of the bonds shall not be available to Developer until work is commenced on Phase 2 or Phase 3 of the Project, and shall be available as set forth in **Section 3.04(E)**. Developer shall demonstrate the existence of the Developer Equity to the reasonable satisfaction of the City. The commitment letter shall be in form and content consistent with market lending conditions subject to normal and customary disbursement requirements. Upon receipt of the executed loan commitment, the City will direct its advisors to commence work on the documents related to the issuance of the bonds. Once the loan documents are complete and the lender(s) have certified to the City they are complete and ready for execution, then the City will authorize marketing of the bonds. Prior to or simultaneously with the closing of the bonds, the Developer Financing loan shall be closed and funded to the satisfaction of the City.

Developer shall use commercially reasonable efforts to secure Developer Financing that will enable the Developer to timely implement and complete the Developer Project Work as required in this Agreement. Developer shall keep the City reasonably informed of all matters related to 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 publication of the ordinance approving 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 one percent (1%) 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 CID Bonds issued for such CID 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 in a special fund for the duration of the CID Term (the “**CID Fund**”) and utilized solely to repay, in the following order: City CID District Expenses; CID Bonds; and unreimbursed CID Eligible Project Costs. The specifics of the issuance and repayment of the CID Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

Section 3.04 Bond Issuance; Priority of Disbursement of Net Bond Proceeds

A. Bond Issuance. The parties contemplate one or more issuances of TIF Bonds and/or CID Bonds which are estimated by Developer to generate the Net Bond Proceeds to fund all or a portion of the Approved Eligible Project Costs. The parties agree that the bond schedule attached hereto as **Exhibit C** currently reflects commercially reasonable underwriting practices, including interest rates, debt-service coverage ratios for TIF Bonds and CID 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**.

B. Cooperation. The parties shall reasonably cooperate to achieve bond issuances that will generate the Incentive Funding in a manner and time reasonably sufficient to facilitate completion of the Project. All issuances shall be issued in the City's sole discretion after consultation with its financial consultants and advisors.

C. Conditions Precedent for Bonds.

1. The issuance of the TIF Bonds and CID Bonds shall be conditioned upon:
 - (a) The Developer shall not be in default of this Agreement beyond any applicable cure period.
 - (b) Evidence of Developer Financing and Developer Equity as required by **Section 3.01**.
 - (c) Construction contracts for Developer's Project Work.
 - (d) Evidence of compliance with the requirements of **Section 2.04(B)(2)**.
 - (e) A current Project Budget that demonstrates that all of the Developer's Project Work relating to the applicable phase 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.
 - (f) Proposed schedule for the completion of the Project (as may be subject to change as provided herein).
 - (g) Timely commencement of construction of Phase 2 or 3.

In addition to the foregoing the Master Funding Agreement must be executed by the parties thereto as conditions to the issuance of the TIF Bonds and CID Bonds.

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

1. Provide written notice to Developer that **Section 3.04(C)** has not been satisfied; or
2. Provide affirmative notice to Developer that the conditions precedent to its obligations to issue the TIF Bonds and CID Bonds have been met at which time City's commitment to issue the applicable issuance of TIF Bonds or CID Bonds will become irrevocable, subject to satisfactory underwriting and the terms of this Agreement.

E. Distribution of Net Bond Proceeds. Net Bond Proceeds will be held by the bond trustee in a project fund pursuant to the Master Funding Agreement and shall be disbursed in the following order of priority (i) to pay any outstanding Eligible Public Costs; and (ii) then to pay Approved Eligible Project Costs, all in accordance with the Bond Documents; provided, however, that Net Bond Proceeds shall be disbursed pari-passu with the loan portions of Developer Financing, meaning Net Bond Proceeds and the loan portions of Developer Financing will be disbursed in proportion to the percentage of the total sources of funds for the Project that each source represents.

F. City Credit Support. Under no circumstances will the City extend credit support to the financing of the Project, including TIF Bonds, CID 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 hereto as **Exhibit E** 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, and (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.

A. 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.

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.

B. The City may conduct an investigation, and if the City determines that the Project Improvements have been constructed in accordance with 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 and CID Bonds are issued, or in the event that market conditions restrict the ability of the City to issue the TIF Bonds or CID 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 issue private placement bonds which will be purchased by the Developer.

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. No otherwise Eligible Project Costs related to travel, entertainment or meals shall be reimbursed from the Net Bond Proceeds unless otherwise approved in advance in writing by the City.

C. Except for (i) real estate commissions and administrative costs directly related to the Project that might be paid to Cameron Group, LLC and (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 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). 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.

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 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, 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 and both parties shall be released from all their respective rights and obligations under this Agreement.

Section 3.14 Drainage and Benefit District 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 Project Area. 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 date of publication 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.

ARTICLE V

REAL ESTATE TAXES

Section 5.01 Agreement 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 shall pay such taxes and assessments promptly on or before the due date of such tax bills. Failure to timely pay such real estate tax bills shall be an event of default under Section 9.01 below. Provided, however, that Developer or its successors shall have the right to pay said taxes under protest in accordance with applicable law. In addition to other remedies for default, City reserves the right to withhold Pay As You Go reimbursements and the proceeds of CID Bonds and/or TIF Bonds from Developer for such time as real estate taxes and assessments levied against the Property are delinquent. Developer acknowledges that the real estate tax and assessments on the Property are currently delinquent. Developer agrees to pay such delinquency within ten (10) days after obtaining Developer Financing for Phase 1 of the Project and further agrees that, in all events, permits to commence construction of Phase 1 of the Project will be withheld by the City until such delinquency is satisfied.

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.

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, & 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 and/or CID 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 and/or CID 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 Project Improvements are 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 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 who shall execute the Assignment Agreement at the direction of the Developer;

(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 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, 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 Fourth 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.

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, including failure to perform the City Project Work in a time and manner necessary to facilitate the Development Schedule, 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. 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 **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, construction oversight fees, 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, construction oversight fees, 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 CID 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 Five Hundred Thousand Dollars (\$500,000) 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.

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, CID 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 no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer, contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal 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.

Indemnity and Release.

A. **Developer Indemnity.** 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(A)** 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

With copy to:

Evan F. Fitts
Polsinelli
700 West 47th Street, Suite 1000
Kansas City, MO 64112

To the City:

Mayor
City of Mission, Kansas
6090 Woodson
Mission, KS 66202

With copies to:

Lewis A. Heaven, Jr.
Spencer Fane LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, KS 66210

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

Section 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 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.

A. 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.

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: Steve Schowengerdt
Steve Schowengerdt, Mayor

ATTEST:

By: Martha Sumrall
Martha Sumrall, City Clerk


ARYEH REALTY, LLC

By: [Signature]
Title: Authorized Signatory

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 7th day of November, 2017, to me personally known, appeared Steve Schowengerdt and Martha Sumrall, 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:

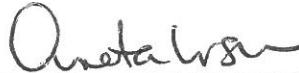
12-29-2020

NILO FANSKA
Notary Public
State of Kansas
My Appt. Expires: 12-29-2020

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

On this 6th day of November, 2017, to me personally known, appeared Allen Gross, 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.



NOTARY PUBLIC

My Commission Expires:

3-18-21

[SEAL]

ANETA URSU
NOTARY PUBLIC-STATE OF NEW YORK
No. 01UR6278216
Qualified In Kings County
My Commission Expires 03-18-2021

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

<u>Land, Demolition & Predevelopment Costs</u>	<u>Development Budget</u>	<u>Approved Eligible Project Costs</u>	<u>TIF Eligible Project Costs</u>	<u>CID Eligible Project Costs</u>
Property Acquisition	\$7,550,000	\$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	\$7,420,005	\$0	\$0	\$0
Engineering	\$2,944,401	\$0	\$0	\$0
Legal	\$1,861,125	\$0	\$0	\$0
Real Estate Taxes	\$1,861,592	\$0	\$0	\$0
Interest on Past Loans	\$5,244,330	\$0	\$0	\$0
Closing Costs /Mortgage Tax on Past Loans	\$1,962,642	\$0	\$0	\$0
Prior Contractor General Conditions / Fees / Other	\$1,285,255	\$0	\$0	\$0
Marketing / Promotions	\$580,009	\$0	\$0	\$0
Miscellaneous 3rd Party Expenses	\$820,238	\$0	\$0	\$0
Developer - General Conditions	\$548,654	\$0	\$0	\$0
Developer - Miscellaneous	\$485,862	\$0	\$0	\$0
Developer - Project Management / Coordination	\$976,641	\$0	\$0	\$0
Developer - Travel / Lodging / Meals	\$461,140	\$0	\$0	\$0
Developer - Meals & Entertainment	\$20,904	\$0	\$0	\$0
Developer - Allocated Overhead	\$651,550	\$0	\$0	\$0
Developer - Other Legacy less Minimum Rents	\$412,329	\$0	\$0	\$0
Total Land Costs	\$38,134,083	\$10,597,406	\$10,597,406	\$10,597,406
<u>Site Work, Infrastructure & Parking</u>				
Hard Costs - Parking Garage (1,041 Spaces)	\$15,010,155	\$15,010,155	\$15,010,155	\$15,010,155
Sitework	\$7,999,429	\$7,999,429	\$7,999,429	\$7,999,429
Offsite	\$500,000	\$500,000	\$500,000	\$500,000
Total Site Work	\$23,509,584	\$23,509,584	\$23,509,584	\$23,509,584
<u>Hard Costs</u>				
Hard Costs Retail (Roeland)	\$3,854,490	\$3,854,490	\$0	\$3,854,490
Hard Costs Retail (Johnson)	\$2,066,827	\$2,066,827	\$0	\$2,066,827
Hard Costs Entertainment/Retail	\$32,224,500	\$32,224,500	\$0	\$32,224,500
Hard Costs Hotel (includes Restaurant & Spa)	\$23,745,480	\$23,745,480	\$0	\$23,745,480
Hard Costs Residential	\$22,295,094	\$22,295,094	\$0	\$22,295,094
Hard Costs Office	\$9,750,000	\$9,750,000	\$0	\$9,750,000

Payment & Performance Bonds	\$523,457	\$523,457	\$104,782	\$523,457
Insurance/Builders Risk	\$1,235,477	\$1,235,477	\$247,310	\$1,235,477
General Contractor Fee	\$2,830,020	\$2,830,020	\$566,495	\$2,830,020
Tenant Improvements	\$5,043,180	\$5,043,180	\$0	\$5,043,180
Contingency	\$6,101,746	\$6,101,746	\$1,221,408	\$6,101,746
Total Hard Costs	\$109,670,271	\$109,670,271	\$2,139,995	\$109,670,271

Soft Costs

Architecture/Engineering Services	\$3,248,652	\$3,248,652	\$650,294	\$3,248,652
Legal	\$375,000	\$375,000	\$75,065	\$375,000
Platting	\$75,000	\$75,000	\$15,013	\$75,000
Civil Engineer (includes geo-tech and survey)	\$29,000	\$29,000	\$5,805	\$29,000
Testing & Special Inspections	\$200,000	\$200,000	\$40,035	\$200,000
Real Estate Taxes	\$228,000	\$228,000	\$228,000	\$0
Stormwater Assessments	\$3,952,000	\$3,952,000	\$3,952,000	\$0
Residential Marketing and FF&E	\$358,000	\$358,000	\$71,662	\$358,000
Project Branding & Marketing	\$50,000	\$50,000	\$10,009	\$50,000
Farmers Interest	\$504,000	\$504,000	\$100,887	\$504,000
Hotel Pre Opening	\$1,000,000	\$1,000,000	\$0	\$1,000,000
Hotel Supplies	\$400,000	\$400,000	\$0	\$400,000
Hotel FFE	\$3,400,000	\$3,400,000	\$0	\$3,400,000
Hotel Operator Technical Services Fee	\$200,000	\$200,000	\$0	\$200,000
Development Fee	\$4,564,451	\$2,000,000	\$0	\$2,000,000
Project Staffing	\$2,250,000	\$0	\$0	\$0
Residential Staffing	\$150,000	\$150,000	\$0	\$150,000
Permit & Fees	\$796,053	\$796,053	\$159,349	\$796,053
Accounting (Audit, etc.)	\$50,000	\$50,000	\$10,009	\$50,000
Developer Reimbursements	\$300,000	\$0	\$60,052	\$0
Leasing Commissions	\$1,792,817	\$1,792,817	\$0	\$1,792,817
Soft Cost Contingency	\$750,000	\$750,000	\$150,130	\$750,000
Total Soft Costs	\$24,672,973	\$19,558,522	\$5,528,310	\$15,378,522

Construction Loan Closing Cost

Mortgage Broker Fee	\$616,821	\$616,821	\$123,488	\$616,821
Bank Fee	\$1,233,642	\$1,233,642	\$246,975	\$1,233,642
Title Insurance	\$925,231	\$925,231	\$185,231	\$925,231
Mortgage Recording Tax	\$185,046	\$185,046	\$37,046	\$185,046
Legal (Owner and Lender)	\$500,000	\$500,000	\$100,100	\$500,000
Construction Monitoring	\$150,000	\$150,000	\$30,030	\$150,000
3rd Parties	\$250,000	\$250,000	\$50,050	\$250,000
Total Construction Loan Closing Cost	\$3,860,740	\$3,860,740	\$772,920	\$3,860,740

Interest Reserve

Construction Loan Interest Reserve	\$4,200,000	\$4,200,000	\$840,840	\$4,200,000
Bond Payment Reserve	\$2,399,022	\$2,399,022	\$480,284	\$2,399,022
Total Financing Costs	\$6,599,022	\$6,599,022	\$1,321,124	\$6,599,022

TOTALS:	\$206,446,673	\$173,795,545	\$43,869,339	\$169,615,545
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*Transient Guest Tax revenues are considered as a part of the TIF Eligible Project costs and may be subject to additional certification criteria.

EXHIBIT B-1

CONSTRUCTION SCHEDULE

- No later than October 31, 2018 – Commence construction of Phase 1
- No later than April 30, 2020 – Complete construction of Phase 1
- No later than December 31, 2020 – Commence construction of Phase 2 or 3
- No later than December 31, 2022 – Complete construction of Phase 2 or 3

EXHIBIT C
BOND SCHEDULE

EXHIBIT D

INSURANCE REQUIREMENTS

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. Subcontractors. The Developer shall include all subcontractors as additional insureds under its policies or shall furnish to the City Clerk and project manager separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

EXHIBIT E

CERTIFICATION OF EXPENDITURES FORM

Request No. _____

Date: _____

Pursuant to **Section 3.06** of the Third Amended and Restated Redevelopment Agreement for the Gateway Retail District (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

By: _____
Title: _____

Approved this ____ day of _____, 201__

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 ¹
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MEMORANDUM

Date: October 17, 2017
To: Mayor and City Councilmembers
From: Laura Smith, City Administrator
RE: Mission Gateway Redevelopment Project

In 2005, The Cameron Group, LLC, a development company from East Syracuse, New York, purchased the Mission Mall property with plans to build a mixed-use development on the site. In 2006, the Planning Commission reviewed and approved the rezoning and preliminary site plan for the redevelopment of the subject property for urban development composed of retail, office, hotel, restaurant, and residential uses (Ordinance #1203). Since the initial “MXD” zoning and preliminary site plan was first approved, more than ten years ago, the project has evolved through several iterations, reflected in revised plans presented to the Planning Commission and the City Council in 2007, 2008, 2012, and 2015.

The subject property is the site of the former Mission Mall and is zoned Planned Mixed Use District “MXD”. This district is intended to encourage a variety of land uses in closer proximity to one another than would be possible with more conventional zoning districts, and to encourage building configurations that create a distinctive and memorable sense of place. Developments in this district are allowed and expected to have a mixture of residential, office and retail uses, along with public spaces, entertainment uses and other specialty facilities that are compatible in both character and function. Developments are also expected to utilize shared parking facilities linked to multiple buildings and uses by an attractive and logical pedestrian network that places more emphasis on the quality of the pedestrian experience than is generally found in typical suburban development. Buildings are intended to be primarily multi-story structures with differing uses organized vertically rather than the horizontal separation of uses that commonly results from conventional zoning districts.

The Comprehensive Plan indicates this area is appropriate for Mixed Use High-Density to be composed of a pedestrian friendly mix of neighborhood and community office uses, retail-commercial and service-commercial uses, institutional, civic, and medium to high density Residential.

The preliminary site plan for the current project was approved by the City Council on January 20, 2016 after a public hearing before the Planning Commission in September 2015. Final site plan approval was granted by the Planning Commission in March 2017.



MEMORANDUM

Since 2005, the Developer had identified several unique development challenges and added costs which created a project financing gap. As a result, they requested the City consider using a variety of economic development tools to establish a public-private partnership which would be mutually beneficial for both the City and the Developer.

Review and Evaluation of Financing Request

When considering redevelopment projects of this nature, the City employees a team of consultants which includes an independent financial advisor, a land use attorney, and bond counsel to assist the staff in crafting a recommendation which provides for a public-private partnership that balances the needs of both the City and the Developer. Over a series of committee meetings and worksessions in the last several months, we have discussed the developer's request for the use of Tax Increment Financing (TIF), a Community Improvement District (CID), Industrial Revenue Bonds (IRBs) and other public participation tools project as well as clarified the Council's goals and concerns regarding the project.

Bruce Kimmel, of Ehlers, Inc. has provided a detailed memo which is included in the packet and describes not only the decision-making framework, but outlines the key points of the deal which has been negotiated with the Developer and is being recommended for Council Consideration.

As you will see outlined in the memo, the recommendation is for the City and the Developer to share in revenues throughout the entire TIF term - allowing for the entire community to benefit immediately from the project. The revenues coming to the City are new revenues - revenues which would not be available if the project is not built. The City's participation in the project does not take away services or benefits for any current residents or businesses, and provides an opportunity for significant financial benefits (\$40.74 million) over the next 20 years.

During the worksession on Wednesday evening, we will review the financial components of the project in detail, along with the additional terms included in the Redevelopment Agreement which push the Developer to achieve full build out as quickly as possible, and address other concerns voiced by the City Council. Following the worksession, the following items have been placed on the City Council agenda for consideration and action.

Ordinance Approving TIF Redevelopment Project Plan

The City has taken the steps necessary to establish a Redevelopment (TIF) District for the project area. Following creation of the Redevelopment District the developer submitted a Redevelopment Project Plan which outlined:



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1. A summary of the comprehensive feasibility study prepared in conjunction with the redevelopment project;
2. A reference to the redevelopment district plan that identifies the redevelopment project area that is set forth in the comprehensive plan that is being considered;
3. A description and map of the redevelopment project area to be redeveloped;
4. The relocation assistance plan; and
5. A detailed description of the buildings and facilities proposed to be constructed or improved in such area.

The Planning Commission has reviewed the Redevelopment (TIF) Project Plan and found it to be in conformance with the City's Comprehensive Plan. The City Council held a public hearing on the Redevelopment (TIF) Project Plan at the August 16 City Council meeting, at which time there was a question posed regarding how the revenue projections were determined, with no one speaking specifically in favor or against the use of tax increment financing for the project. The final step in authorizing TIF for the Mission Gateway project is consideration of an ordinance approving the Fourth Amended Redevelopment Project Plan. It requires a two-thirds majority vote (6 of 9, with Mayor voting) of the Governing Body to approve the ordinance. The ordinance was prepared by Gary Anderson of Gilmore & Bell, P.C. the City's Bond Counsel.

Ordinance Establishing Gateway Community Improvement District (CID) #3

Earlier this year, the developer submitted a new CID Petition associated with the current project, which would replace the two existing districts with one. The petition called for the establishment of a single district, encompassing the entire site which would levy an additional 1.00% CID sales tax effective January 1, 2019. The City Council held a public hearing on the CID Petition for Gateway CID #3 on August 16.

The final step in creating the Gateway CID #3 is consideration of an ordinance establishing the District. A simple majority vote of the City Council is required to pass the ordinance. The ordinance was prepared by Gary Anderson, the City's Bond Counsel

Resolution of Intent to Issue Industrial Revenue Bonds (IRBs) for Sales Tax Exemption

The Developer has asked the City to consider issuing IRBs to finance the costs of acquiring, constructing, and equipping multiple facilities for the benefit of the project. This tool provides the developer with a sales tax exemption on the purchase of these items. The City has used IRBs in connection with a number of other projects including Mission Square, Welstone, and most recently with the Mission Trails apartment project approved for 6201 Johnson Drive.



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The IRBs are special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement. Pursuant to terms included in the Redevelopment Agreement, the developer agrees to purchase the bonds. The bonds are not a general obligation of the City, and are not backed by the full faith and credit of the City. The bonds are not payable in any manner by taxation, but shall be payable solely from the funds provided for in the Indenture. The Resolution was prepared by Gary Anderson of Gilmore & Bell, P.C. the City's Bond Counsel.

In order to approve this transaction, the City Council will consider a Resolution establishing the intent and authority of the City to issue Industrial Revenue Bonds (IRBs) in one or more series in an aggregate principal amount not to exceed \$214 million. The final amount will be lower, and will be established at the time the bonds are issued. A simple majority vote is required to approve this Resolution.

Ordinance Approving the Redevelopment Agreement and Terminating Gateway CID District's #1 and #2

The Redevelopment Agreement is the document used to capture and control the terms of the "deal" as agreed to by the City and the developer. It addresses, among other things, the project budget, the project schedule, the obligations of the developer and the City, the process for certifying and reimbursing TIF and CID eligible expenses, requirements for transfer or sale of the property, and events of default and remedies.

The Redevelopment Agreement was prepared by Pete Heaven, the City's land use attorney. The enclosed Third Amended and Restated Redevelopment Agreement has undergone significant review and the terms presented represent those recommended by the City and agreed to by the Developer.

The ordinance presented would not only approve the Third Amended and Restated Redevelopment Agreement, but would terminate the existing Community Improvement District's (Gateway CID's #1 and #2) which currently exist on the project site. The ordinance may be adopted by a simple majority vote of the City Council.

Summary

Although agreements had been negotiated and approved for previous Gateway projects, we approached this project with a fresh set of eyes - challenging assumptions, evaluating costs,



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and vetting all information provided by the Developer. After months of review and analysis, the staff and the City's consultant team are pleased to present this recommended partnership with the Gateway developer to bring a unique and exciting project to the City of Mission.

All members of the City's consultant team will be present to review and answer questions regarding any of the documents and/or actions anticipated to finalize the Mission Gateway Project. Please feel free to contact any member of the City team with questions or comments regarding the project or the process.



Memo

To: City of Mission, Kansas
From: Bruce Kimmel, Senior Municipal Advisor
Date: October 16, 2017
Subject: **Recommended Mission Gateway Agreement**

Representatives of the City of Mission and the Gateway Developer (Aryeh Realty, LLC) have negotiated the primary terms of the “Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.” This memo summarizes the key deal points of the proposed Redevelopment Agreement, and addresses various points of discussion which have occurred over the last several months.

Developer Request

The Developer originally requested that the City allow the project to capture 100% of all revenues associated with the project including:

- Property tax increment
- City general sales taxes (1% rate)
- City transient guest taxes (9% rate)
- Supplemental CID sales tax (1%)

The revenues would first be used to support a pay-as-you-go agreement on the “Phase 1” apartment and small retail portion of the project, and then to repay Special Obligation TIF and CID Bonds covering Phase 1 plus the Phase 2 and 3 parking structure, hotels, large retail, and office components. And finally, the Developer requested to receive all TIF and CID “tails” – the surplus revenues after the bonds were paid in full – on a pay-go basis during the estimated remaining 6-8 years of the 20-year TIF and 22-year CID terms.

Financial Analysis and Evaluation

The City took a different approach to its prospective participation in the project. First, we delved into the Gateway development budget and operating proforma, TIF and CID projections, and underlying assumptions, to evaluate the project’s financial need for City assistance and the causes thereof.

Next we considered, from the City’s perspective, the relative value of each requested financial tool, and our need for upfront and ongoing financial benefits that it could use to

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fund City services and perhaps also infrastructure improvements, versus waiting for the project's tail surpluses and/or full City revenues following the 20-year TIF term.

With these considerations in mind, the City determined the following:

- The Developer demonstrated a legitimate need for City participation for the project to be financially viable, and even with its full TIF and CID request, the Developer's prospective return on investment was not excessive.
- That said, the Gateway would also be viable and achieve a reasonable return without the benefit of the Developer's full TIF and CID request.
- Sales and transient guest taxes hold more future value for the City than does its relatively small share of property tax increment, and the CID holds little value due to restrictions on how these revenues may be spent.
- The City will benefit more from retaining a portion of the incremental new sales and transient guest taxes during the entire 20-year TIF term than it would from collecting a larger portion of TIF tails in years 14 through 20.
- Allocating fixed percentages of the sales and transient guest taxes to the project TIF over 20 years will give the Developer an incentive to complete and open the Gateway promptly, and to work with the City to make the SO Bond issuances as efficient as possible – so that the Developer may then receive a larger amount of tail reimbursements for remaining eligible costs.

Accordingly, the City negotiated the following key deal points which are included in the proposed Redevelopment Agreement:

- The project will receive 100% of a 1% CID fee over the maximum 22-year term starting 2019 and ending 2040, pledged to a Phase 1 pay-go note, then to SO Bonds, and finally to tails, all to fund / reimburse CID-eligible expenses.
- The project will receive 100% of the Gateway project area's property TIF over the maximum 20-year term starting 2019 and ending 2038, pledged in the same manner as above and to fund / reimburse TIF-eligible expenses.
- The project will receive 55% of the City general sales tax collections within the Gateway project area over the 20-year TIF term starting 2019 and ending 2038. This allocation reflects the "TIF capture" of 0.55% of the City's 1% general sales tax rate, with the City retaining revenues generated from the remaining 0.45% portion over the entire TIF term.
- The project will receive 89% of the City transient guest tax collections within the Gateway project area over the 20-year TIF term starting 2019 and ending 2038. This allocation reflects the "TIF capture" of 8% of the City's 9% transient guest tax rate, with the City retaining revenues generated from the remaining 1% portion over the entire TIF term.

- The Industrial Revenue Bond (IRB)-driven sales tax exemption on Gateway construction materials, as discussed previously.

The City’s retention of 45% and 11%, respectively, of Gateway-derived general sales and transient guest taxes during the TIF term – is estimated to generate \$545,000 of City revenue in 2021, the first full year of Gateway sales activity. These new taxes are in addition to the following City revenue elements, as estimated in the table below:

- Property taxes generated from the TIF project area’s “base value”;
- Business license and franchise fees (likely higher than shown here);
- City allotment of Johnson County sales tax;
- Stormwater assessments (approximately \$600,000 annually) through 2034;
- Stormwater utility fees;
- 0.25% street sales tax, expiring 2022 unless extended by voters; and
- 0.375% parks sales tax, expiring 2023 unless extended by voters;

In all, City revenues generated from the Gateway are estimated to total \$1.93 million in 2021. In addition to the repayment of the stormwater debt, a focus on providing significant revenue streams annually throughout the life of the project was a top priority for the Council, staff and consultant team.

YEAR	Base Property Taxes	Business License and Franchise Fees	City Portion of County Sales Tax (Variable)	Stormwater Special Assessment	Stormwater Utility Fees	.25% Street Sales Tax (Sunsets 2022)	.375% Park Sales Tax (Sunsets 2023)	.45% Sales Tax	1% Transient Guest Tax	Total City Revenues
2018	\$0	\$0	\$0	\$1,498,988	\$78,288	\$0	\$0	\$0	\$0	\$1,577,276
2019	\$46,487	\$0	\$1,887	\$599,595	\$78,288	\$43,842	\$65,763	\$78,916	\$0	\$914,780
2020	\$46,487	\$10,200	\$7,967	\$599,595	\$78,288	\$185,071	\$277,607	\$333,128	\$28,919	\$1,567,264
2021 - Full STIF	\$46,487	\$10,200	\$10,933	\$599,595	\$78,288	\$253,954	\$380,931	\$457,117	\$87,633	\$1,925,139
2022 - Full PTIF	\$46,487	\$10,200	\$11,161	\$599,595	\$78,288	\$259,252	\$388,878	\$466,654	\$90,262	\$1,950,778
2023	\$46,487	\$10,200	\$11,394	\$599,595	\$78,288	\$264,663	\$396,994	\$476,393	\$92,970	\$1,976,985
2024	\$46,487	\$10,200	\$11,632	\$599,595	\$78,288	\$270,189	\$405,283	\$486,340	\$95,759	\$2,003,772
2025	\$46,487	\$10,200	\$11,874	\$599,595	\$78,288	\$275,832	\$413,748	\$496,497	\$98,632	\$2,031,154
2026	\$46,487	\$10,200	\$12,123	\$599,595	\$78,288	\$281,595	\$422,393	\$506,871	\$101,591	\$2,059,143
2027	\$46,487	\$10,200	\$12,376	\$599,595	\$78,288	\$287,481	\$431,221	\$517,466	\$104,639	\$2,087,753
2028	\$46,487	\$10,200	\$12,635	\$599,595	\$78,288	\$293,492	\$440,238	\$528,286	\$107,778	\$2,116,999
2029	\$46,487	\$10,200	\$12,899	\$599,595	\$78,288	\$299,631	\$449,447	\$539,336	\$111,011	\$2,146,896
2030	\$46,487	\$10,200	\$13,169	\$599,595	\$78,288	\$305,902	\$458,852	\$550,623	\$114,342	\$2,177,458
2031	\$46,487	\$10,200	\$13,445	\$599,595	\$78,288	\$312,305	\$468,458	\$562,150	\$117,772	\$2,208,700
2032	\$46,487	\$10,200	\$13,726	\$599,595	\$78,288	\$318,846	\$478,269	\$573,923	\$121,305	\$2,240,639
2033	\$46,487	\$10,200	\$14,014	\$599,595	\$78,288	\$325,526	\$488,289	\$585,947	\$124,944	\$2,273,291
2034	\$46,487	\$10,200	\$14,307	\$599,595	\$78,288	\$332,349	\$498,524	\$598,228	\$128,692	\$2,306,671
2035	\$46,487	\$10,200	\$14,607		\$78,288	\$339,318	\$508,977	\$610,772	\$132,553	\$1,741,203
2036	\$46,487	\$10,200	\$14,914		\$78,288	\$346,435	\$519,653	\$623,584	\$136,530	\$1,776,092
2037	\$46,487	\$10,200	\$15,227		\$78,288	\$353,706	\$530,558	\$636,670	\$140,626	\$1,811,762
2038	\$46,487	\$10,200	\$15,547		\$78,288	\$361,131	\$541,697	\$650,036	\$144,845	\$1,848,231
	\$929,749	\$193,800	\$245,836	\$11,092,508	\$1,644,048	\$5,710,521	\$8,565,781	\$10,278,937	\$2,080,804	\$40,741,984

Of the estimated annual revenues, it should be noted that the special (dedicated) sales tax revenues comprise 1/3 (\$635,000) of this total, foreshadowing the importance of future reauthorization decisions. Assuming continued voter approval of existing

dedicated sales taxes, total City revenues total during the 20-year TIF term are estimated at \$40.74 million. Without renewal of the special (dedicated) sales taxes, the total City revenues during this same period could be expected to generate approximately \$28.72 million.

To achieve an apples-to-apples comparison of the City’s prospective tax and fee benefits, as detailed above, to the Developer’s proposed TIF and CID benefits, it makes sense to convert each party’s revenue streams into present values. For example, the present value of the City’s \$40.74 million revenue total is \$29.5 million. On the Developer’s side, the present value can be estimated as follows:

TIF and CID Bond Proceeds	\$28.15 million
Surplus tails	<u>\$ 8.40 million</u>
Total present value to Developer	\$36.60 million

This present value equals 21% of the project’s estimated \$173 million approved eligible development costs, and 18% of the total project budget. Exhibit B to the Third Amended and Restated Redevelopment Agreement illustrates the project budget and the costs which the City has determined to be eligible for consideration as a part of the public-private partnership.

City staff and consultants believe the TIF and CID deal terms described above balances the Developer’s need for a financially viable project with the City’s need for ongoing and diversified fiscal benefits from the development – both to fund future City operations and priorities, but also in recognition of stormwater and other costs that the City has incurred and carried from the inception of this redevelopment in 2006.

Other Considerations

In addition to the financial participation outlined above, the proposed Redevelopment Agreement contains several provisions to mitigate the City’s risks and concerns related to this project. These include:

- All current and delinquent real estate taxes and special assessments must be brought current when Phase I of the project is financed.
- In the future, any failure to pay property taxes or assessments on time will be an event of default that the Developer must remedy promptly or else lose the pledged revenues.
- The Developer must obtain the City’s permission before selling any portion of the site for another firm to development, and/or selling any portion of the completed Gateway project. These terms help to protect the integrity of the process by which the City determined the need for assistance, and to ensure that any future owner has the experience and resources to continue successful operations.
- The Agreement specifies that the Developer may use the project TIF and CID only to fund future eligible costs and to recoup a limited set of “legacy costs” – namely, site acquisition, tenant buyouts and relocation, demolition, and earthwork.

- All bonds to be issued in connection with the project will be Special Obligation Bonds, meaning that at no time will the City pledge its full faith and credit toward their repayment.

There has been a concern that the Developer will build Phase 1 only, collecting pay-as-you-go TIF and CID from the residential and small retail uses, and not complete subsequent phases. Given the Developer's need to complete Phases 2 and 3 in order to achieve a positive return on investment, and the Developer's progress to-date in moving the elements of these Phases toward development readiness we believe that risk is remote.

However, in recognition of this concern, the Agreement caps the total TIF and CID available to the Developer from Phase 1. In addition, the issuance and use of SO Bonds is conditioned on the Developer having undertaken elements of Phase 2 and/or 3. These and other provisions still permit the Developer to "count" the Phase 1 TIF and CID in negotiating its Phase 1 financing, but would impose serious limitations if the project stopped there.

And finally, the Agreement specifies that the Developer will fund third-party construction oversight, helping to ensure City and Developer compliance with statutory limits on the eligible uses of TIF and CID revenues and bond proceeds, and reimburse the City for expenses incurred in negotiating the Agreement, the associated TIF and CID actions, and the future issuance of both IRBs and SO Bonds.

Summary

City Staff and Consultants believe the proposed Agreement moves both the City and the Developer toward our common goal, of "completing the entire Gateway project according to the approved plan as quickly as possible in order to realize mutual benefit for the Developer and the City."

We look forward to receiving and discussing your questions about the Agreement terms, as well as regarding the four action items that appear on the October 18 Council agenda as New Business Items:

- Ordinance adopting amended Redevelopment Project Plan (authorizing TIF);
- Ordinance authorizing Mission Gateway Community Improvement District #3;
- Resolution of City intent to issue Industrial Revenue Bonds; and
- Ordinance approving Redevelopment Agreement and terminating the previous Gateway CIDs #1 and #2.

Please contact me at bkimmel@ehlers-inc.com or (651) 697-8572 with any questions, and thank you for the opportunity to be of assistance to the City of Mission.

City of Mission	Item Number:	3.
ACTION ITEM SUMMARY	Date:	October 9, 2019
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: An ordinance excluding certain lands from the City of Mission, Kansas in conformity with the provisions of K.S.A. 12-504 and K.S.A. 505 and all amendments hereto.

RECOMMENDATION: Approve the ordinance excluding certain lands from the City of Mission, KS in accordance with state statutes.

DETAILS: Since December 2018, the cities and Mission and Roeland Park have been discussing the benefits of annexation/de-annexation of approximately .7 of an acre at the northeast corner of Johnson Drive and Roe Boulevard. Earlier this month, the two cities agreed to proceed with the process and the first step was to adopt a resolution calling a public hearing.

Following submission of Roeland Park's petition, Mission adopted Resolution 1034 calling the public hearing at 7 p.m. on October 16, 2019. Required notice of the public hearing was published in the Legal Record on September 24. Immediately following the public hearing, the Council will consider an ordinance to exclude the property from Mission's corporate boundaries. The City of Roeland Park will also need to convene a meeting and adopt an ordinance to annex the same property in order to complete the de-annexation process.

The City of Roeland Park plans to hold a special meeting at 7:30 p.m. on October 16 for purposes of approving an ordinance to annex that portion just excluded from Mission into Roeland Park. The ordinances then will be published on October 22, and become effective upon publication.

Councilmember Flora and Councilmember Inman are working with two designated representatives from the Roeland Park City Council in an effort to negotiate acceptable financial terms for the de-annexation and resolve the remaining outstanding issues all at one time.

CFAA CONSIDERATIONS/IMPACTS: NA

Related Statute/City Ordinance:	K.S.A. 12-504 <i>et. seq.</i> , and K.S.A. 505
Line Item Code/Description:	NA
Available Budget:	NA

ORDINANCE NO. _____

AN ORDINANCE EXCLUDING CERTAIN LANDS FROM THE CITY OF MISSION, KANSAS IN CONFORMITY WITH THE PROVISIONS OF K.S.A. 12-504 AND K.S.A. 505 AND ALL AMENDMENTS HERETO.

WHEREAS, the City of Roeland Park, Kansas has filed a petition requesting that the following real property (the "Land") be de-annexed from the City of Mission, Kansas:

All that part of the Northeast Quarter and Northwest Quarter of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, being more particularly described as follows: Commencing at the Northwest corner of said Northeast Quarter; thence South 01°55'22" East, along the West line of said Northeast Quarter, a distance of 1,617.43 feet to a point of intersection with the centerline of vacated U.S. Highway 50, as said centerline was shown on the final plat of ROSELAND COURT, a subdivision in said City of Roeland Park, said point also being the Point of Beginning; thence North 67°56'55" East, along said centerline, a distance of 526.72 feet to a point on the Southerly extension of the East line of said ROSELAND COURT plat; thence South 01°55'37" East, along the Southerly extension of said East line, a distance of 155.77 feet; thence westerly, departing the Southerly extension of said East line, along a non-tangent curve to the right having an initial tangent bearing of South 61°57'03" West, a radius of 514.05 feet, and a central angle of 26°09'00", for an arc length of 234.62 feet; thence South 88°06'03" West a distance of 341.37 feet to a point of intersection with the Southwesterly extension of said vacated U.S. Highway 50 centerline; thence North 67°56'55" East, along the Southwesterly extension of said centerline, a distance of 78.16 feet to the Point of Beginning, containing 55,289 square feet, or 1.269 acres, more or less.

WHEREAS, a depiction of the Land the proposed new boundary lines of the City of Roeland Park, Kansas and City of Mission, Kansas is attached as Exhibit A;

WHEREAS, the City of Mission, Kansas has complied with the legal notice, publication, and public hearing requirements of K.S.A. 12-504;

WHEREAS, the governing body of the City of Mission, Kansas finds that no private rights will be injured or endangered by the de-annexation of the Land;

WHEREAS, the governing body of the City of Mission, Kansas finds that the public will suffer no loss or inconvenience by the exclusion and de-annexation of the Land;

WHEREAS, the governing body of the City of Mission, Kansas finds that in justice to the City of Roeland Park, the City of Mission, Kansas should grant the aforesaid petition for the exclusion or de-annexation of the Land;

WHEREAS, the governing body of the City of Mission, Kansas finds it advisable to exclude and de-annex the Land.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS:

SECTION 1. Pursuant to K.S.A. 12-505(a), the Governing Body of the City of Mission, Kansas, deems it advisable to exclude and de-annex and hereby excludes and de-annexes the following legally described land, located in Johnson County, Kansas, to-wit:

All that part of the Northeast Quarter and Northwest Quarter of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, being more particularly described as follows: Commencing at the Northwest corner of said Northeast Quarter; thence South 01°55'22" East, along the West line of said Northeast Quarter, a distance of 1,617.43 feet to a point of intersection with the centerline of vacated U.S. Highway 50, as said centerline was shown on the final plat of ROSELAND COURT, a subdivision in said City of Roeland Park, said point also being the Point of Beginning; thence North 67°56'55" East, along said centerline, a distance of 526.72 feet to a point on the Southerly extension of the East line of said ROSELAND COURT plat; thence South 01°55'37" East, along the Southerly extension of said East line, a distance of 155.77 feet; thence westerly, departing the Southerly extension of said East line, along a non-tangent curve to the right having an initial tangent bearing of South 61°57'03" West, a radius of 514.05 feet, and a central angle of 26°09'00", for an arc length of 234.62 feet; thence South 88°06'03" West a distance of 341.37 feet to a point of intersection with the Southwesterly extension of said vacated U.S. Highway 50 centerline; thence North 67°56'55" East, along the Southwesterly extension of said centerline, a distance of 78.16 feet to the Point of Beginning, containing 55,289 square feet, or 1.269 acres, more or less.

SECTION 2. The new northern boundary of the City of Mission, Kansas adjacent to the Land shall be the center line of the westbound lane for traffic on Johnson Drive, as shown on Exhibit A.

SECTION 3. The City Clerk of the City of Mission, Kansas shall file a certified copy of this Ordinance with the County Clerk, the Department of Records and Tax Administration, and the Election Commission of Johnson County.

PASSED AND APPROVED by the City Council this ___th day of _____ 2019.

APPROVED by the Mayor this ___th day of _____ 2019.

Ronald E. Appletoft, Mayor

ATTEST:

Martha M. Sumrall, City Clerk

APPROVED AS TO FORM ONLY:

David K. Martin, City Attorney

