



Agenda

**REGULAR MEETING
GOVERNING BODY
CITY OF LENEXA, KANSAS
17101 W. 87th STREET PARKWAY**

**MAY 5, 2020
7:00 PM
ZOOM ONLINE MEETING
<https://us02web.zoom.us/j/87673758760>**

CALL TO ORDER

ROLL CALL

CITY CLERK STATEMENT

To reduce the spread of COVID-19 and consistent with County and State Orders limiting gatherings of individuals to 10 persons or less, the meetings of the Lenexa City Council will be conducted remotely using Zoom, an online meeting tool. The Mayor, City Councilmembers, and City Staff will all participate in the meeting remotely. Members of the public may attend meetings virtually using the link and/or phone dial-in information provided in the Meetings Calendar section of the City's website, as well as on the specific meeting agenda itself.

During this time of health emergency, the City Council will be prudent with the meeting time and consideration of agenda items. Public comment during the meeting will be limited to public hearing items only. As always, public comment on any agenda items can be submitted in advance. Public comments will be taken up to 5 PM on Monday before the City Council meeting and will be distributed to all members of the Governing Body before the meeting. If a member of the public wishes to submit advance comment for an item, please email cityclerk@lenexa.com and reference the meeting date and agenda item on which you wish to comment. Please also include your name and address for the public record.

While the public is encouraged to submit comments in advance, meetings that include public hearings will include opportunities for public comment using the Zoom application. The directions for how to participate in a public

hearing will be posted on the City's website. Please be prepared to give your first name, last name, and address for the public record. Proper meeting decorum is expected of all in attendance at the meeting and anyone who fails to act properly may be removed from the meeting. The City reserves the right to discontinue a meeting if any improper behavior occurs that prevents the uninterrupted conduct of business.

APPROVE MINUTES

April 21, 2020 City Council meeting draft minutes (located in the Appendix)

MODIFICATION OF AGENDA

PROCLAMATIONS

Building Safety Month

CONSENT AGENDA

Item Numbers 1 through 3

All matters listed within the Consent Agenda have been distributed to each member of the Governing Body for review, are considered to be routine, and will be enacted by one motion with no separate discussion. If a member of the Governing Body or audience desires separate discussion on an item, that item may be removed from the Consent Agenda and placed on the regular agenda.

1. Acceptance for maintenance
 - a. Acceptance of the 88th Terrace, Penrose Lane to Winchester Street, Kiewit public improvements for maintenance

This project constructed the Amenity Zone public improvements associated with the adjacent Kiewit site development. Improvements included sidewalk, brick pavers, and minor storm drainage improvements.

- b. Acceptance of the City Center Amenity Zone, 89th Street and Penrose Lane, Phase I and Phase II Project for maintenance

This project constructed the Amenity Zone along 89th Street and Penrose Lane. Improvements included angled parking, street and pedestrian lighting, landscaping, and sidewalks.

2. Resolution authorizing certain employees and officers to act as agents to transact business with authorized financial institutions and repealing Resolution 2018-50

The Finance Department is responsible for processing City financial transactions with authorized financial institutions. Due to staffing changes in the Finance Department, the City needs to modify the list of employees authorized to process transactions with authorized financial institutions.

3. Ordinance amending Ordinance 5552 and adjusting the compensation terms for the contract franchise with Mobilitie, LLC

Mobilitie, LLC is a wireless infrastructure provider that provides telecommunication service and capacity through a distributed antennae system within the city. In accordance with federal and state wireless regulations, the City now assesses wireless service providers using a fixed right-of-way access fee of \$25 per site and no longer bases the fee on gross receipts. This ordinance will amend the existing franchise ordinance to include an annual franchise fee of \$25 per site in the public right-of-way.

END OF CONSENT AGENDA

NEW BUSINESS

4. Consideration of an amendment to Project Plan 4C in the City Center TIF District (87 Renner Multi-Family Project)
 - a. Ordinance amending Ordinance 5701 and approving Amended Project Plan 4C.

- b. Resolution approving a Disposition & Development Agreement with 87 Renner, LLC.

On December 18, 2018, the City passed Ordinance 5701 approving Project Plan 4C in the City Center TIF District. Project Plan 4C included construction of approximately 250 multi-family units and 10,000 square feet of retail and associated infrastructure at the northeast corner of 87th Street Parkway and Renner Boulevard. The original developer was unable to acquire the property and obtain financing necessary to complete the project and the City terminated the Disposition & Development Agreement with the original developer in August 2019. However, the City did not repeal Project Plan 4C in hopes that a subsequent developer would purchase the property and restart the project. 87 Renner, LLC ("Developer") purchased the Project Plan 4C property in early 2020 and desires to construct a substantially similar project. The Developer has asked the City to consider amending Project Plan 4C to update the feasibility study, increase certain TIF eligible costs, and adjust the timeline for performance. If Project Plan 4C is amended, the Governing Body will consider adoption of a new Disposition & Development Agreement with the Developer setting forth the terms and conditions for reimbursements of TIF eligible costs.

COUNCILMEMBER REPORTS

STAFF REPORTS

ADJOURN

APPENDIX

- 5. April 21, 2020 City Council meeting draft minutes
- 6. Building Safety Month Proclamation
- 7. Item 4 -- Amended Project Plan 4C

8. Item 4 -- Disposition & Development Agreement

Dist. Governing Body; Management Team; Agenda & Minutes Distribution List

IF YOU NEED ANY ACCOMMODATIONS FOR THE MEETING, PLEASE CONTACT THE CITY ADA COORDINATOR, 913/477-7550. KANSAS RELAY SERVICE 800/766-3777. PLEASE GIVE 48 HOURS NOTICE



**CITY COUNCIL
MEMORANDUM**

ITEM 1a

SUBJECT: Acceptance of the 88th Terrace, Penrose Lane to Winchester Street, Kiewit public improvements for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: May 5, 2020

ACTION NEEDED:

Accept the 88th Terrace, Penrose Lane to Winchester Street, Kiewit public improvements for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

This project constructed the Amenity Zone public improvements associated with the adjacent Kiewit site development. Work included sidewalk, brick pavers and minor storm drainage improvements.

Staff performed a final inspection on April 21, 2020 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on May 5, 2020 and will expire on May 5, 2022.

The contractor was JE Dunn.

Total Pipe Length: 25 Linear Feet

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded by private development.

STAFF RECOMMENDATION:

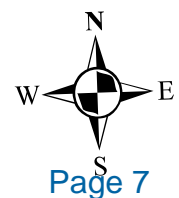
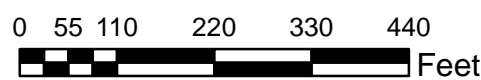
Acceptance of the public improvements.

ATTACHMENTS

1. Map



**Public Improvements
for
88th Terrace / Kiewit**





**CITY COUNCIL
MEMORANDUM**

ITEM 1b

SUBJECT: Acceptance of the City Center Amenity Zone, 89th Street and Penrose Lane, Phase I and Phase II Project for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: May 5, 2020

ACTION NEEDED:

Accept the City Center Amenity Zone, 89th Street and Penrose Lane, Phase I and Phase II Project for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

This project constructed the Amenity Zone along 89th Street and Penrose Lane. Improvements included angled parking, street and pedestrian lighting, landscaping, and sidewalks.

Staff performed a final inspection on September 27, 2019 and advised that all work had been completed in accordance with the plans and specifications. The delay in acceptance is due to the need for budget revisions and final approval by the Kansas Department of Transportation. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on May 5, 2020 and will expire on May 5, 2022.

The contractor was Mega Industries Corporation.

Total Pipe Length: 101 Linear Feet

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded by:

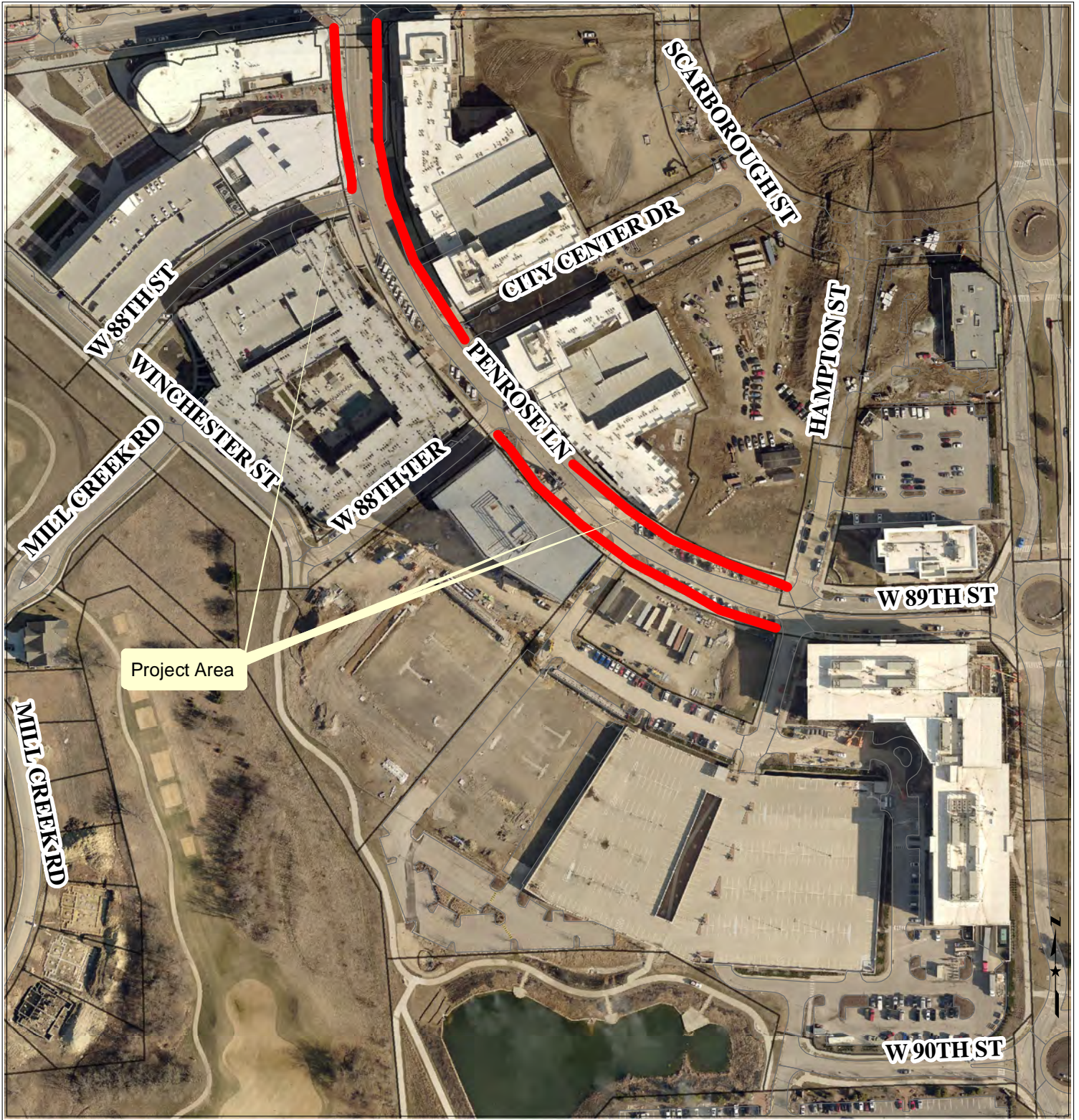
Federal Transportation Alternatives Program (TAP)	\$560,000
City-at-Large	\$556,728
Developer (The District)	\$189,969
Total	\$1,306,697

STAFF RECOMMENDATION:

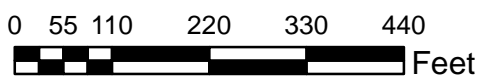
Acceptance of the project.

ATTACHMENTS

1. Map



**Amenity Zone
89th Street / Penrose Lane**





**CITY COUNCIL
MEMORANDUM**

ITEM 2

SUBJECT: Resolution authorizing certain employees and officers to act as agents to transact business with authorized financial institutions and repealing Resolution 2018-50

CONTACT: Doug Robinson, Chief Financial Officer

DATE: May 5, 2020

ACTION NEEDED:

Adopt a resolution authorizing certain employees and officers to act as agents to transact business with authorized financial institutions and repealing Resolution 2018-50.

PROJECT BACKGROUND/DESCRIPTION:

Multiple Finance Department employees are responsible for processing City financial transactions with authorized financial institutions. Due to staffing changes in the Finance Department, staff has prepared the proposed resolution removing Jill Grube (Jill is retiring this month after completing over 30 years of service with the City) and adding Jennifer Deming (the City hired Jennifer earlier this year as Accounting Manager). If the proposed resolution is adopted, the following individuals will be authorized to transact City business with authorized financial institutions:

- Doug Robinson, Chief Financial Officer
- Briana Burrichter, Assistant Chief Financial Officer
- Jennifer Deming, Accounting Manager
- Lisa Cline, Senior Budget & Financial Analyst

The proposed resolution also repeals Resolution 2018-50 (the previous resolution authorizing Finance Department employees to transact City business with authorized financial institutions).

STAFF RECOMMENDATION:

Adoption of the resolution.

ATTACHMENTS

1. Resolution

RESOLUTION NO. 2020-_____

A RESOLUTION AUTHORIZING CERTAIN EMPLOYEES AND OFFICERS TO ACT AS AGENTS TO TRANSACT BUSINESS WITH AUTHORIZED FINANCIAL INSTITUTIONS AND REPEALING RESOLUTION 2018-50.

WHEREAS, during its regular course of business, the City's Finance Department conducts financial transactions with multiple financial institutions, many of which are necessary for the City to comply with state law requirements; and

WHEREAS, state law requires the City offer available funds for deposit to local financial institutions complying with the City's Investment Policy ("Authorized Financial Institutions"); and

WHEREAS, The City designates, through a formal selection process, a financial institution as its official depository ("Official Depository") for the transaction of City business, including but not limited to, the issuance of checks, drafts and other negotiable instruments; and

WHEREAS, each financial institution doing business with the City requires corporate resolutions, signature cards, and other documents verifying the authorization of certain employees and officers to perform financial transactions on behalf of the City; and

WHEREAS, in the interest of the efficient exercise of public business, the City Council finds and determines it is in the City's best interest to designate and authorize specific City employees and officers to act as the City's agent to transact the financial business of the City.

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

SECTION ONE: The City of Lenexa, Kansas (the "City"), a municipal corporation, does hereby authorize and designate Doug Robinson, Chief Financial Officer, Briana Burrichter, Assistant Chief Financial Officer, Jennifer Deming, Accounting Manager, and Lisa Cline, Senior Budget and Financial Analyst, to act as agents of the City to perform investment transactions on behalf of the City, including but not limited to such acts as drawing or endorsing all checks, drafts, notes and other items payable to or owned by the City for deposit with an Authorized Financial Institution, or for collection or discount by an Authorized Financial Institution; to accept drafts and other items payable at the Authorized Financial Institution; and to make wire transfers, authorize certificates of deposits, and other financial transactions as reasonably necessary to carry out the investment business of the City.

SECTION TWO: The Mayor, as provided in City Code Section 1-2-A-1, and the Chief Financial Officer are authorized to sign all drafts, orders, and other items drawn on a City account at the Official Depository of the City.

SECTION THREE: Where permitted by law, stamped, electronic, or digital signatures of these individuals may be accepted as original signatures.

SECTION FOUR: Resolution 2018-50 is hereby repealed.

SECTION FIVE: The authority conferred by this Resolution shall remain in full force and effect until this Resolution is amended or repealed, or actual written notice has been provided to the Authorized Financial Institution that an individual's authority under this Resolution has been revoked. Any such notice shall not affect any items in process at the time such notice is given.

SECTION SIX: The Mayor is hereby authorized to execute any corporate banking resolutions or other documents in addition to this Resolution that may be required by any Authorized Financial Institution to verify the authority of the above designated individuals to act as agents of the City to conduct financial or investment transactions.

SECTION SEVEN: This Resolution shall become effective upon passage.

ADOPTED by the Lenexa City Council on May 5, 2020.

SIGNED by the Mayor on May 5, 2020.

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, Assistant City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 3

SUBJECT: Ordinance amending Ordinance 5552 and adjusting the compensation terms for the contract franchise with Mobilitie, LLC

CONTACT: Sean McLaughlin, Assistant City Attorney

DATE: May 5, 2020

ACTION NEEDED:

Pass an ordinance amending Ordinance 5552 and adjusting the compensation terms for the contract franchise with Mobilitie, LLC ("Mobilitie").

PROJECT BACKGROUND/DESCRIPTION:

Mobilitie designs, builds, and operates outdoor and indoor wireless networks utilizing a distributed antenna system (DAS) network. The City recently received a request from Mobilitie to update the compensation terms. The City now assesses wireless service providers a \$25 per site right-of-way (ROW) access fee and no longer bases the fee on gross receipts.

The proposed ordinance amends Ordinance 5552, which grants Mobilitie a contract franchise to operate a telecommunications system within the city. Under this ordinance, Mobilitie's use of the ROW is subordinate to the City's health, safety, and welfare requirements and regulations, including Lenexa's ROW management ordinance. The franchise does not include the right to use any other City-owned facilities, parkland, or property.

Compensation under the amended franchise is set at \$25 annually per site in the ROW, which is consistent with the City's other franchise agreements. Pursuant to the franchise, Mobilitie is required to maintain sufficient workers' compensation and general liability insurance or demonstrate to the City that it is self-insured and able to provide sufficient coverage to protect the City from any claims for personal injury or property damage occasioned by Mobilitie. The franchise was originally approved for a 2-year term with up to eight automatic one-year extensions for a total potential length of 10 years and is set to expire in 2026.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

The City will receive franchise fees of \$25 annually per site in the ROW.

STAFF RECOMMENDATION:

Passage of the ordinance.

ATTACHMENTS

- 1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 5552 TO ADJUST THE COMPENSATION TERMS FOR THE CONTRACT FRANCHISE WITH MOBILITIE, LLC, A DELAWARE LIMITED LIABILITY COMPANY.

WHEREAS, pursuant to Ordinance No. 5552 passed on September 6, 2016 the City of Lenexa, Kansas granted Mobilitie, LLC authority to construct, operate and maintain a telecommunications system as a competitive infrastructure provider within the City ("Original Franchise Ordinance"); and

WHEREAS, in accordance with K.S.A. 12-2001, the City now assesses wireless service providers a fixed right-of-way access fee and no longer bases the fee on gross receipts and the Governing Body desires to amend the Original Franchise Ordinance to reflect the new compensation terms; and

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

SECTION 1. The Original Franchise Ordinance is hereby amended to read as follows:

1. Subsection (f) "Gross Revenues" of SECTION 1. DEFINITIONS is deleted in its entirety.
2. SECTION 4. COMPENSATION TO THE CITY is deleted in its entirety and amended to read as follows:

SECTION 4. COMPENSATION TO THE CITY.

a. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of \$25 per site in the Public right-of-way upon which Grantee has attached its facilities. The franchise fee shall be paid in advance and shall commence upon the installation of Grantee's facilities. As to any new facility installed at a site during any calendar year, such fee shall be prorated based on the number of days in the calendar year remaining from the installation date.

b. Within 15 days following the effective date of this Contract franchise ordinance, Grantee shall pay a prorated franchise fee based on the number of days in the calendar year remaining. Thereafter, Grantee shall pay the franchise fee in advance on an annual basis without requirement for invoice or reminder from the City, and within 15 days of the first day of the calendar year for which the payment applies; provided, that as to any new Facility installed during any calendar year, such fee shall be prorated and paid as to that partial calendar year. If any

franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the the manner in which the franchise fee was calculated for the period covered by the payment.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

3. SECTION 12. TRANSFER AND ASSIGNMENT is deleted in its entirety and amended to read as follows:

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the city of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this

Contract with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

SECTION 2. All other terms and provisions of the Original Franchise Ordinance shall remain in full force and effect.

SECTION 3. This Ordinance shall take effect and be in force from and after its publication by summary once in the official City newspaper.

PASSED by the City Council of the City of Lenexa, Kansas this 5th day of May, 2020.

SIGNED by the Mayor this 5th day of May, 2020.

CITY OF LENEXA, KANSAS

[SEAL]

By: _____
Michael A. Boehm, Mayor

Attest:

Jennifer Martin, City Clerk

Approved As To Form:

Sean McLaughlin, Assistant City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 4

SUBJECT: Consideration of an amendment to Project Plan 4C in the City Center TIF District (87 Renner Multi-Family Project)

CONTACT: Sean McLaughlin, Assistant City Attorney

DATE: May 5, 2020

ACTION NEEDED:

(a) Pass an ordinance approving an amendment to Project Plan 4C; and

(b) adopt a resolution approving the amended Disposition & Development Agreement ("the DDA") with 87 Renner, LLC.

PROJECT BACKGROUND/DESCRIPTION:

On December 18, 2018, the City approved Ordinance 5701 establishing Project Plan 4C on 7.07 acres in the City Center Redevelopment Tax Increment Financing (TIF) District (the "Project Plan"). The Project Plan is located at the northeast corner of 87th Street Parkway and Renner Boulevard. The Project Plan contemplates construction of a mixed-use multi-family development including approximately 250 multi-family units, approximately 10,000 square feet of retail, structured parking, and other associated infrastructure (the "Private Project Improvements"). The City also entered into a Disposition & Development Agreement ("Original DDA") with Renner Housing, LLC ("Original Developer") setting forth terms, conditions, and performance standards required to be met in order for the Original Developer to receive TIF reimbursement. The Original Developer was unable to comply with the terms of the Original DDA, including acquiring title to the Project Plan property and obtaining financing, and the Original DDA was terminated in August 2019. However, the Project Plan was not terminated in order to allow a subsequent developer to purchase the property and construct the Project Plan.

In early 2020, 87 Renner, LLC ("Developer") purchased the Project Plan property and desires to construct the Project Plan in a substantially similar manner. The Project Plan's 20-year term will not change, but due to the delay in the Project Plan's start a few amendments are necessary. The amendments to the Project Plan will update the feasibility study, increase the amount of TIF eligible costs, and adjust the timeline for construction. The new feasibility study lowers the TIF increment estimate from \$10.5 million to \$8.2 million. The TIF eligible costs are increased from \$13.5 million to \$14.1 million and includes increases in both public and private costs that rose slightly due to the delay in construction. The Project Plan is now expected to be completed in 2023.

The TIF increment generated from the Project Plan 4C area will be used to reimburse the Developer and the City for TIF eligible costs associated with the project. Since the Original DDA was terminated, the Developer and the City will enter a new Disposition & Development Agreement that sets forth the eligible

costs, priority, and terms of reimbursement ("DDA"). The DDA generally provides for the City to receive 100% of the TIF increment until the City is reimbursed for \$481,703 in special assessments associated with the 87th Street Special Benefit District, which the City prepaid for the Property pursuant to a Participation Agreement between Renner Development Company, LLC and the City dated November 20, 2007. Thereafter, the Developer will need to be reimbursed with up to 100% of the TIF increment for 10 years and then 50% for 1 year (the "Developer Term"). The private (a/k/a Developer) TIF reimbursable expenses include costs incurred for land acquisition, site development (grading, stormwater, water mains, utility costs in the right of way, etc.), surface and structured parking, landscaping, lighting and similar site amenities, and interest during construction. At the end of the Developer Term until the end of the 20-year TIF term, the City would be entitled to receive 100% of the TIF increment from the Project Plan 4C area for reimbursement of its public (a/k/a City) TIF eligible costs including land acquisition costs, public parking structures and infrastructure improvements to the 87th Street Parkway and I-435 interchange.

This DDA also includes a number of performance standards including commencement by December 31, 2021 and thereafter diligently pursued with completion on or before December 31, 2023 (with City Manager's ability to extend these dates by up to 60 days); payment of required fees and compliance with all City Codes, including property maintenance; and civic involvement during the developer TIF term which includes:

- (1) being a dues-paying member in good standing with the Lenexa Chamber of Commerce,
- (2) making an annual contribution to the Lenexa Foundation earmarked for Public Art in an amount determined by the Developer but no less than 0.5% of the annual distribution of TIF Revenues, and
- (3) annually sponsor a minimum of one City festival, event, or activity at any sponsorship level. The civic involvement requirements are a relatively new addition to the TIF DDA, but it takes into consideration the use of public incentives and therefore the need to give back to the community.

No public hearing is required for this proposed amendment to the Project Plan because it is not a substantial change. The intended purpose of the Project Plan remains the same and the amendment is only allowing for minor adjustments to the Project Plan.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

The City Center TIF District was established in 2001, at which time the increment was captured. The eligible reimbursable TIF expenses total \$14,183,956 of which \$10,183,956 are private (Developer) TIF eligible costs and \$4 million are public (City) TIF eligible costs. The feasibility study prepared by CFO Doug Robinson conservatively estimates TIF increment generated from the project at \$8,242,239 over the 20-year TIF term. The TIF costs exceed the estimated TIF increment, which is expected because the feasibility study is conservative. The Developer will use private funds, revenues and financing to pay for the approved TIF reimbursable expenses that exceed the actual TIF increment.

STAFF RECOMMENDATION:

Passage of the ordinance and adoption of the resolution.

ATTACHMENTS

1. Map
2. Ordinance
3. Resolution
4. Amended Project Plan 4C (located in the Appendix)
5. Disposition & Development Agreement (located in the Appendix)

TIF Project Plan 4C



ORDINANCE NO. _____

ORDINANCE APPROVING THE AMENDED PROJECT PLAN 4C WHICH AMENDS PROJECT PLAN 4C WITHIN THE CITY CENTER TIF DISTRICT AND AMENDS ORDINANCE NO. 5701.

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) cities are authorized to assist in the development and redevelopment of eligible areas located within cities in order to promote, stimulate and develop the general and economic welfare of the state of Kansas and its communities; and

WHEREAS, in order to promote, stimulate and develop the general and economic welfare of the city of Lenexa, Kansas (“City”), the Lenexa City Council on September 11, 2001, adopted Ordinance No. 4427 establishing a Redevelopment District (the “Original District”) pursuant to the Act. The Original District was amended on December 20, 2005 by Ordinance No. 4824 to include a total of approximately 424 acres (the “District”) referred to as the City Center TIF District; and

WHEREAS, on December 18, 2018, the Governing Body adopted Ordinance No. 5701 approving and adopting a redevelopment project plan within the City Center TIF District (the “Original Project Plan 4C”); and

WHEREAS, the Original Project Plan 4C contemplated the construction of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, structured and surface parking, sidewalks, landscaping, and associated infrastructure; and

WHEREAS, on December 18, 2018 the City passed Resolution No. 2018-154 approving a Disposition and Development Agreement (the “Original DDA”); and

WHEREAS, the original developer was unable to acquire the Original Project Plan 4C property and the Original DDA was terminated; and

WHEREAS, 87 Renner, LLC purchased the Original Project Plan 4C property in early 2020 and intends to construct a substantially similar project; and

WHEREAS, the City now desires to approve an Amended Project Plan 4C which amends the Original Project Plan 4C to update the feasibility study, increase the amount of TIF eligible costs and adjust the timeline (the “Amended Project Plan 4C”); and

WHEREAS, a revised comprehensive feasibility study has been completed which indicates the benefits derived from this Amended Project Plan 4C over the twenty (20) year Amended Project Plan 4C term are significant. Revenues from the Amended Project Plan 4C when combined with other available revenues, including private debt and equity, are expected to be sufficient to pay for the eligible redevelopment project costs.

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

SECTION ONE: The Original Project Plan 4C is hereby amended as reflected in the Amended Project Plan 4C, attached hereto as Exhibit “1” and incorporated herein by reference.

SECTION TWO: Upon passage and publication of this ordinance, Ordinance No. 5701 approving Original Project Plan 4C is hereby amended.

SECTION THREE: The Amended Project Plan 4C shall be available for review in the Lenexa City Clerk’s office during regular business hours.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage by the Governing Body and publication of an ordinance summary once in the official newspaper of the City.

PASSED by the Lenexa Governing Body this 5th day of May, 2020.

SIGNED by the Mayor this 5th day of May, 2020.

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, Assistant City Attorney

RESOLUTION NO. 2020 - _____

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
A DISPOSITION AND DEVELOPMENT AGREEMENT WITH 87 RENNER, LLC
(PROJECT PLAN 4C- 87 RENNER MULTI-FAMILY PROJECT)**

WHEREAS, on September 11, 2001, the City adopted Ordinance No. 4427 establishing a Redevelopment District generally referred to as the City Center TIF District (“Original District”) which was amended by Ordinance No. 4824 on December 20, 2005 to incorporate a total area of approximately 424 acres, including all four corners of 87th Street Parkway and Renner Boulevard, as well as a tract of land located east of I-435 at 87th Street Parkway (the “City Center TIF District”); and

WHEREAS, the City identified multiple City Center development project areas located within the City Center TIF District, one area of which is located on the northeast corner of 87th Street Parkway and Renner Boulevard and is commonly referred to as “City Center Northeast”; and

WHEREAS, pursuant to K.S.A. 12-1772, as amended, the City prepared Redevelopment Project Plan 4C for property located within City Center Lenexa (the "Project Plan"); and

WHEREAS, on December 18, 2018, the Governing Body adopted Ordinance No. 5701 approving the Project Plan which was found by the Lenexa Planning Commission on November 5, 2018 to be consistent with the intent of the comprehensive plan for the development of the City; and

WHEREAS, on May 5, 2020, the City passed Ordinance No. _____ amending the Project Plan to update the feasibility study, increase the amount of TIF eligible costs and adjust the timeline (“Amended Project Plan”); and

WHEREAS, the Project Plan contemplates construction of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, structured and surface parking, sidewalks, landscaping and associated infrastructure (the “Project”); and

WHEREAS, the City and Developer desire to enter into a Disposition & Development Agreement (“DDA”) regarding the terms for implementation of the Amended Project Plan including but not limited to reimbursement of costs associated with approved TIF eligible costs; the description of such eligible improvements/costs; and the procedures for and priority of reimbursement on a “pay as you go” basis, all as set forth in the DDA attached hereto as Exhibit A.

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

SECTION ONE: The City Council hereby approves and authorizes the Mayor to execute the Disposition and Development Agreement with 87 Renner, LLC in substantially the same form as the document attached hereto as Exhibit A.

SECTION TWO: The approval granted herein is contingent upon Governing Body adoption of the ordinance approving Amended Project Plan 4C and publication thereof as required by law.

SECTION THREE: This Resolution shall be effective upon passage and execution by the Mayor, subject to the conditions set forth in Section Two herein.

PASSED by the City Council this 5th day of May, 2020.

SIGNED by the Mayor this 5th day of May, 2020.

CITY OF LENEXA, KANSAS

[SEAL]

By: _____
Michael A. Boehm, Mayor

Attest:

Jennifer Martin, City Clerk

Approved As To Form:

Sean McLaughlin, Assistant City Attorney



**MINUTES OF THE
APRIL 21, 2020
LENEXA CITY COUNCIL MEETING
ZOOM ONLINE MEETING – 7 PM**

CALL TO ORDER

Mayor Boehm called the meeting to order at 7 PM.

ROLL CALL

Councilmembers Karlin, Eiterich, Nicks, Nolte, Roh, Hunt, Sayers, and Stuke were present with Mayor Boehm presiding.

Staff present included Beccy Yocham, City Manager; Todd Pelham, Deputy City Manager; Mike Nolan, Assistant to the City Manager; Jennifer Martin, City Clerk; Cindy Harmison, City Attorney; and other City staff.

CITY CLERK STATEMENT

To reduce the spread of COVID-19 and consistent with County and State Orders limiting gatherings of individuals to 10 persons or less, the meetings of the Lenexa City Council will be conducted remotely using Zoom, an online meeting tool. The Mayor, City Councilmembers, and City staff will all participate in the meeting remotely. Members of the public may attend meetings virtually using the link and/or phone dial-in information provided in the Meetings Calendar section of the City's website as well as on the specific meeting agenda itself.

During this time of health emergency, the City Council will be prudent with the meeting time and consideration of agenda items. Public comment during the meeting will be limited to public hearing items only. As always, public comment on any agenda items can be submitted in advance. Public comments will be taken up to 5 PM on Monday before the City Council meeting and will be distributed to all members of the Governing Body before the meeting. If a member of the public wishes to submit advance comment for an item, please email cityclerk@lenexa.com and reference the meeting date and agenda item on which you wish to comment. Please also include your name and address for the public record.

While the public is encouraged to submit comments in advance, meetings that include public hearings will include opportunities for public comment using the Zoom application. The directions for how to participate in a public hearing will be posted on the City's website. Please be prepared to give your first name, last name, and address for the public record. Proper meeting decorum is expected of all in attendance at the

meeting and anyone who fails to act properly may be removed from the meeting. The City reserves the right to discontinue a meeting if any improper behavior occurs, which prevents the uninterrupted conduct of business.

APPROVE MINUTES

Councilmember Karlin made a motion to approve the March 31, 2020 Special City Council meeting and April 7, 2020 City Council meeting draft minutes and Councilmember Nicks seconded the motion. Motion passed unanimously by roll call vote.

MODIFICATION OF AGENDA

None.

PROCLAMATIONS

Work Zone Awareness Week April 20-24
Earth Day April 22
Arbor Day April 24

PUBLIC HEARINGS

1. Consideration of issuing industrial revenue bonds and a tax abatement for Lenexa Logistics Centre East - Building 2 Project
 - a. Public hearing to consider an exemption from ad valorem taxes for property financed with industrial revenue bonds
 - b. Resolution determining the intent of the City to issue up to \$17.5 million in industrial revenue bonds and approving a 10-year tax abatement with payment in lieu of taxes agreement

LL East, LLC and Renner 113 LLE, LLC (collectively the "Applicant"), on behalf of LLE II, LLC, are requesting the City issue industrial revenue bonds (IRBs) in an amount not to exceed \$17.5 million to finance the acquisition, construction, and equipping of a 230,594 square foot commercial warehouse/office facility located east of Renner Boulevard at 116th Street. The Applicant has also requested a 10-year tax abatement. Pursuant to state law, the City must hold a public hearing and consider a cost-benefit analysis before approving a tax abatement. Notice of the public hearing was published and provided to the Board of Education for USD 233 and Board of County Commissioners as required by law.

Sean McLaughlin, Assistant City Attorney, stated the City Council previously approved a master resolution of intent for the Lenexa Logistics Centre East development at 116th Street and Renner Boulevard, but tax abatements for each building were not granted at that time. This public hearing is for the issuance of up to \$17.5 million in IRBs and a fixed tax abatement related to the construction of an approximately 230,000 square foot office/warehouse building for Building 2 in this development.

Mr. McLaughlin stated the 10-year tax abatement has a fixed payment in lieu of taxes (PILOT) payment based on a total annual tax of \$1.20/square foot with an annual 2% increase with a fixed payment schedule equating to an abatement of approximately 71% over the 10-year period. This abatement is similar to the abatement for the Lenexa Logistics North development. The IRB issuance would not be subject to the 1% origination fee cap of \$100,000 and the origination fee would go directly to the City for economic development. The cost-benefit analysis indicated a positive net benefit.

Mr. McLaughlin stated that staff recommends approval.

The applicant was present.

Curtis Holland, Polsinelli Law Firm, stated this is another project for this development, as well as Building 4, which is the next item on the agenda, and that both of the buildings are consistent with the preliminary plan approved for the development. He added that the PILOT and its terms are consistent with the master resolution of intent for the overall project. He stated they remain hopeful to begin construction later this year.

Mayor Boehm opened the public hearing at 7:09 PM.

No public comments were made.

Councilmember Stuke made a motion to close the public hearing and Councilmember Eiterich seconded the motion. Motion passed unanimously by voice vote.

The public hearing closed at 7:10 PM.

Councilmember Karlin made a motion to approve item 1b and Councilmember Roh seconded the motion. Motion passed unanimously by roll call vote.

2. Consideration of issuing industrial revenue bonds and a tax abatement for Lenexa Logistics Centre East - Building 4 Project

- a. Public hearing to consider an exemption from ad valorem taxes for property financed with industrial revenue bonds
- b. Resolution determining the intent of the City to issue up to \$30.5 million in industrial revenue bonds and approving a 10-year tax abatement with payment in lieu of taxes agreement

LL East, LLC and Renner 113 LLE, LLC (collectively the "Applicant"), on behalf of LLE IV, LLC, are requesting the City issue industrial revenue bonds (IRBs) in an amount not to exceed \$30.5 million to finance the acquisition, construction, and equipping of a 603,622 square foot commercial warehouse/office facility located east of Renner Boulevard at 116th Street. The Applicant has also requested a 10-year tax abatement. Pursuant to state law, the City must hold a public hearing and consider a cost-benefit analysis before approving a tax abatement. Notice of the public hearing was published and provided to the Board of Education for USD 233 and Board of County Commissioners as required by law.

Sean McLaughlin, Assistant City Attorney, stated the City Council previously approved a master resolution of intent for the Lenexa Logistics Centre East development at 116th Street and Renner Boulevard, but tax abatements for each building were not granted at that time. This public hearing is for the issuance of up to \$30.5 million in IRBs and a fixed tax abatement related to the construction of an approximately 600,000 square foot office/warehouse building for Building 4 in this development.

Mr. McLaughlin stated the 10-year tax abatement has a fixed PILOT payment based on a total annual tax of \$1.20/square foot with an annual 2% increase with a fixed payment schedule equating to an abatement of approximately 71% over the 10-year period. This abatement is similar to the abatement for the Lenexa Logistics North development. The IRB issuance would not be subject to the 1% origination fee cap of \$100,000 and the origination fee would go directly to the City for economic development. The cost-benefit analysis indicated a positive net benefit.

Mr. McLaughlin stated that staff recommends approval.

The applicant was present.

Curtis Holland, Polsinelli Law Firm, stated this would be the largest building in the development, located at the east end of the park.

Mayor Boehm opened the public hearing at 7:14 PM.

No public comments were made.

Councilmember Eiterich made a motion to close the public hearing and Councilmember Stuke seconded the motion. Motion passed unanimously by voice vote.

The public hearing closed at 7:15 PM.

Councilmember Roh made a motion to approve item 2b and Councilmember Nicks seconded the motion. Motion passed unanimously by roll call vote.

COUNCILMEMBER REPORTS

None.

STAFF REPORTS

3. Parks & Recreation Event and Program Update

Staff will present an update on the recommended cancellation of the Great Lenexa BBQ Battle and modifications to the upcoming outdoor pool season.

Beccy Yocham, City Manager, stated that staff has updates on a major Parks and Recreation event and one program to present. She added that both Gary Ristow, Parks and Recreation Director, and Logan Wagler, Deputy Parks and Recreation Director, were present for questions.

Ms. Yocham stated that the COVID-19 pandemic has affected many City events and after review and consideration of several variables, staff has reached the determination that it would be in the City's best interest to cancel the Great Lenexa BBQ Battle scheduled for June 26-27. She explained that this event involves hundreds of teams, hundreds of volunteers and staff, and thousands of attendees, crowds which would likely not be permitted because of the pandemic.

Ms. Yocham also explained that now is the time to cancel the event before any money is spent on preparations and equipment for the event and so that notification of the cancelation can be made to the public, vendors, and teams.

The mayor and several councilmembers shared their support of staff's recommendation.

Ms. Yocham then presented staff's recommendation for the 2020 outdoor pool season. She stated this recommendation assumes that the state and county stay-at-home orders would be lifted in time to allow for an outdoor pool season this

summer. She stated that staff has looked at the current situation from a variety of perspectives and has concerns about public safety, the ability to practice social distancing, availability of necessary cleaning supplies, and adequate time to prepare the pools, as well as anticipated low attendance if there is no vaccine or cure for the virus. She added that the City's ability to hire and train pool staff is hindered currently due to the pandemic.

Ms. Yocham stated that staff believes the City would have the resources to open one outdoor pool and recommends that pool be Indian Trails Aquatic Center because it is the most centrally located of the three outdoor city pools and has the most amenities.

A brief discussion of pool operations followed Ms. Yocham's presentation. The Governing Body shared its support of staff's recommendation.

ADJOURN

Councilmember Eiterich made a motion to adjourn the meeting and Councilmember Nolte seconded the motion. Motion passed unanimously by voice vote.

The meeting adjourned at 7:40 PM.

Proclamation

WHEREAS, the City of Lenexa is committed to recognizing our growth and strength depends, in part, on the safety and economic value of the homes, buildings, and infrastructure that serve our citizens, both in everyday life and in times of natural disaster, and;

WHEREAS, our confidence in the structural integrity of the buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers and others in the construction industry. These professionals work year-round to ensure the safe construction of buildings, protecting us where we live, learn, work, and play, and;

WHEREAS, the theme for Building Safety Month 2020, “Safer buildings. Safer communities. Safer world.” encourages all Americans to be aware of the importance of building safe and resilient construction; fire prevention; disaster mitigation; and new technologies in the construction industry. Building Safety Month 2019 also recognizes that countless lives have been saved due to the implementation of safety codes by local and state agencies, and;

WHEREAS, each year, in observance of Building Safety Month, Americans are asked to commit to improving building safety and economic investment at home and in the community, and to acknowledge the essential service provided by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

NOW, THEREFORE, I, Michael A. Boehm, Mayor of the City of Lenexa, Kansas do hereby proclaim the month of May 2020 in the City of Lenexa to be

BUILDING SAFETY MONTH

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2020.



Michael A. Boehm
Mayor of Lenexa, Kansas

AMENDED CITY CENTER REDEVELOPMENT (TIF) PROJECT PLAN 4C
CITY CENTER REDEVELOPMENT (TIF) DISTRICT AS AMENDED
(87 Renner Multi-Family Project)

In accordance with K.S.A. 12-1770 *et seq.*, as amended (the “**Act**”), to promote, stimulate and develop the general and economic welfare of the city of Lenexa, Kansas (“**City**”), the Lenexa City Council adopted Ordinance No. 4427 on September 11, 2001, establishing a Redevelopment (TIF) District (the “**Original District**”). The Original District was amended on December 20, 2005 by Ordinance No. 4824 to include a total of approximately 424 acres (the “**District**,” also referred to as the “**City Center TIF District**”) and is legally described in attached **Exhibit A**. The City has identified multiple City Center development projects located within the City Center TIF District.

The Act allows one or more TIF projects to be undertaken by a city within an established district and any such project plan may be implemented in separate development stages. To date, the City has approved multiple TIF project plans in the area located on the northeast corner of 87th Street Parkway and Renner Boulevard, which area is commonly referred to as the “**City Center Northeast**” or “**CCNE**” area.

On or about December 18, 2018, the City adopted Ordinance No. 5071 approving and adopting Redevelopment (TIF) Project Plan 4C (“**Original Project Plan 4C**”). Due to financial difficulties, the original developer was unable to acquire the Original Project Plan 4C property. Subsequently, 87 Renner, LLC (the “**Developer**”) purchased the property and now intends to complete Original Project Plan 4C. While there are not substantial changes to the Original Project Plan 4C, the City desires to amend and replace the Original Project Plan 4C to update the feasibility study, increase the amount of TIF eligible costs and adjust the timeline. The Amended Redevelopment (TIF) Project Plan 4C is hereinafter referred to as “**Project Plan 4C**”, also referred to as the “**Project Plan**”. Project Plan 4C is located within the City Center TIF District and incorporates approximately 7.07 acres located in the northeast corner of the intersection of 87th Street and Renner Boulevard and is legally described on **Exhibit B** (the “**Project Plan 4C Area**”).

Anticipated within Project Plan 4C is construction of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, land acquisition, structured and surface parking, landscaping, hardscaping, utilities, sidewalks, and related site amenities, signage and associated infrastructure improvements all of which are more specifically described in **Section 5** herein (the “**Private Project**”).

Project Plan 4C shall extend for a period of twenty (20) years from the date the Project Plan is approved by the City (the “**Project Plan Term**”). The incremental ad valorem property taxes (as defined by the Act) generated from the real property within the Project Plan 4C Area during the Project Plan Term in excess of the amount of real property taxes collected for the base year assessed

valuation shall constitute the “**TIF Revenues**”. In accordance with the Act and in cooperation with the Planning Commission, the City prepared Project Plan 4C.

1. Financial Feasibility.

Staff prepared a Financial Feasibility Study (“**Feasibility Study**”) for Project Plan 4C attached hereto as **Appendix 1**. Projections on development in the Project Plan 4C Area were provided by the Developer. The Feasibility Study incorporates a number of assumptions, including a constant mill levy of 96.591, which excludes the 20 mill school levy and the 1.5 State mill levy. The mill levy may vary each year of the TIF Term based on legislative actions and budgetary decisions made by the individual taxing jurisdictions. It also assumes property tax collection at 100%, Private Project completion by January 1, 2024 and a two percent (2%) annual increase in appraised valuation after the Private Project is fully constructed and stabilized.

The Developer will advance funds necessary to construct the Private Project and to pay the costs associated with the estimated and approved, private TIF eligible reimbursable costs set forth generally on **Exhibit C** attached hereto (the “**Private TIF Reimbursable Costs**”), and it is contemplated that Developer will subsequently be reimbursed with TIF Revenues received by the City on a “pay-as-you-go” basis. Such advances and reimbursements will be made in accordance with the terms of a Disposition & Development Agreement executed by the Developer and the City (the “**DDA**”). The Private TIF Reimbursable Costs are set forth in more detail in the DDA. The City also identified various public reimbursable costs set forth generally on **Exhibit C** which include reimbursement for the special assessments associated with the 87th Street Special Benefit District which the City prepaid for the Property pursuant to a Participation Agreement between Renner Development Company, LLC and the City dated November 20, 2007 and other public improvements in the District (the “**Public TIF Reimbursable Costs**”), which costs are eligible for TIF reimbursement in accordance with the City Center TIF District Plan and the terms of the DDA. Collectively, the Private TIF Reimbursable Costs and Public TIF Reimbursable Costs are referred to as the “**TIF Reimbursable Costs**”.

There is an estimated total of \$14,183,956 in TIF Reimbursable Costs identified with Project Plan 4C, but reimbursement of TIF Reimbursable Costs is dependent upon the amount of TIF Revenues generated within the Private Project 4C Area during the Project Plan Term and received by the City, and shall be paid in accordance with the amount, priority and duration set forth in the DDA. In no event will any TIF Reimbursable Costs be reimbursed in an amount that exceeds the amount of TIF Revenues available; however, if TIF Revenues exceed the Total TIF Reimbursable Costs.

The Feasibility Study indicates that if projected development, assessed values and tax revenues are accurate, TIF Revenues will be sufficient to reimburse the Developer for a portion of the approved Private TIF Reimbursable Costs. Other

revenue sources, including but not limited to private equity, are available to meet Private TIF Reimbursable Costs and other private development costs associated with the Project. TIF Reimbursable Costs must (1) be reasonably approved by the City in accordance with the terms of the DDA; (2) meet the definition of “redevelopment project cost” set out in K.S.A. 12-1770a(o), as amended; (3) be an eligible expense under the City’s adopted TIF Policy and/or Procedures, unless otherwise permitted in the DDA; (4) be authorized in this Project Plan 4C and in the City Center TIF District Plan; and (5) be in compliance with the terms for reimbursement and prioritization described with particularity in the DDA.

The City has identified up to \$10,133,956 in Private TIF Reimbursable Costs and anticipates reimbursing Developer for such Private TIF Reimbursable Costs incurred and paid by the Developer with available TIF Revenues generated during the twenty (20) year Project Plan Term. The Public TIF Reimbursable Costs total \$4,000,000 plus the annual TIF Administrative Fee and will be reimbursed to the City with available TIF Revenues in the time and priority set forth in the DDA. Based on the current projections and cash flow analysis contained in the Feasibility Study, it is determined that the Project benefits, TIF Revenues and other available revenues, exceed the TIF Reimbursable Costs, and that the TIF Revenues and other available revenue sources, including private revenue sources for the private costs, should be sufficient to pay for such TIF Reimbursable Costs. For any improvements constructed by Developer in Project Plan 4C, the Developer is responsible for all expenses, including but not limited to, Private TIF Reimbursable Costs, even if they exceed the amount of available TIF Revenues. The City reserves the right to amend the specific approved TIF Reimbursable Costs, and the amount, duration and prioritization thereof, to conform to the provisions of the DDA. City may also amend this Project Plan 4C in accordance with state law and the DDA.

In summary, assuming Project Plan 4C approval in the fourth quarter of 2018 and amended in second quarter of 2020 with construction commencing in 2021 and complete by January 1, 2023, the City anticipates the ad valorem property tax increment will generate approximately \$8,242,329 over the Project Plan Term (the “**Estimated Total TIF Revenue Projection**”). The Developer will be responsible for all expenses of Developer, including the Private TIF Reimbursable Costs, above the TIF Revenue generated from Project Plan 4C and allocated to the Private TIF Reimbursable Costs during the Project Plan Term. If the TIF Revenue does not meet the estimated total TIF Reimbursable Costs, the City shall be under no obligation to provide financial assistance to Developer beyond the TIF Revenues actually generated from the Project Plan 4C Area in accordance with the distribution formula and term set out in the DDA. A summary of the feasibility assumptions and Estimated Total TIF Revenue Projection is included in **Exhibit E**.

2. Redevelopment District Plan and Redevelopment (TIF) Project Plan 4C.

Redevelopment District Plan (City Center TIF District Plan)

The City Center TIF District area includes the land within the City of Lenexa, Kansas as legally described on **Exhibit A**, but generally described as an area of approximately 424 acres located on all four corners of 87th Street and Renner Blvd., as well as a tract of land located east of I-435 at 87th St Pkwy. The Redevelopment (TIF) District Plan for the City Center TIF District contemplates development of a mixed use urban development project to be located on all four corners of Renner Boulevard and 87th St Pkwy and east of I-435 at 87th St Pkwy, to include office, retail, residential and public civic uses (“**City Center Project**”).

In accordance with the City Center District Plan, TIF increment may be used to pay for eligible project expenses within specific project areas for such items including but not limited to public infrastructure; land acquisition; site preparation; street improvements and their appurtenances; sidewalks; storm and sanitary sewers; utility improvements as permitted in the Act; parks; parking facilities; landscaping; water mains; storm water detention; sculptures and public art; plazas; and special assessments levied pursuant to KSA 12-6a01 *et seq.* for eligible public infrastructure authorized in the District Plan.

Redevelopment (TIF) Project Plan 4C

Project Plan 4C incorporates approximately 7.07 acres of real estate and improvements. Project Plan 4C is located in the northeast corner of 87th Street Parkway and Renner Boulevard, all within the City Center TIF District. Project Plan 4C Area is legally described in **Exhibit B**. Project Plan 4C consists of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail and associated improvements serving the development, all of which are more specifically described in **Section 5** herein.

3. Map of Redevelopment Project Plan 4C Area.

A map of the Project Plan 4C Area is attached as **Exhibit D**.

4. Relocation Assistance Plan.

No relocation is required with Project Plan 4C and therefore no relocation assistance plan is provided.

5. Description of the Buildings and Facilities Proposed to be Constructed or Improved.

The Private Project part of Project Plan 4C consists of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, surface and structured parking, sidewalks, landscaping and associated infrastructure. Private TIF Reimbursable Costs incurred as a result of Project Plan 4C include, but are not limited to, land acquisition within the Project Plan area, architectural and engineering costs associated with the site improvements (but excluding all other vertical buildings to be owned or leased by the Developer), infrastructure improvements, site

development, structured and surface parking, lighting, landscaping, hardscape, utilities located within the right-of-way, sidewalks, and related site amenities, and TIF Fee. The Private TIF Reimbursable Costs are described in more detail in the DDA.

Public improvements include but are not limited to the special assessments associated the 87th Street Special Benefit District which the City prepaid for the Property pursuant to a Participation Agreement between Renner Development Company, LLC and the City dated November 20, 2007; infrastructure improvements related to the 87th Street Parkway and I-435 interchange improvement project; public parking structures within the District; land acquisition costs within the District; landscaping improvements associated with 87th Street Parkway and I-435 Interchange; 87th Street Parkway traffic signal improvements within the District; and public park improvements within the District (the **“Public Improvements”**). Except as provided herein, the Public Improvements constitute Public TIF Reimbursable Costs. Portions of the 87th Street Parkway and I-435 Interchange turn lane infrastructure and landscape improvements are outside of the District but are necessary for the development and implementation of Project Plan 4C in accordance with K.S.A 12-1770a(o)(T).

6. Other Relevant Information.

- a. Reimbursement of TIF Reimbursable Costs shall be made from ad valorem property tax increment (as defined in the Act) actually received by the City from Project Plan 4C Area and deposited into the special fund established by the City in accordance with K.S.A. 12-1778 (the **“City Center Project Plan 4C Fund”**).
- b. If sufficient TIF Revenues are not available to pay all of the Private TIF Reimbursable Costs, the City is under no obligation to reimburse Private TIF Reimbursable Costs from any other public source. It is contemplated that TIF Reimbursable Costs also will be reimbursed by proceeds from a Community Improvement District that will be formed later.
- c. Prior to any reimbursement of Private TIF Reimbursable Costs, Developer and City shall enter into a separate, valid and enforceable DDA. A detailed description of all TIF Reimbursable Costs, and the procedure for distribution, reimbursement amount and priority of payment of the TIF Reimbursable Costs is set out in the DDA and consistent with this Project Plan 4C.
- d. The City does not anticipate issuing TIF Bonds, however, upon future request of Developer, the City shall reasonably consider any such request to issue TIF Bonds if the market can feasibly support such a bond issue and if the TIF Revenues and any other collateral provided

for such TIF Bonds provide reasonable assurance that the principal of and interest on the TIF Bonds will be paid on a timely basis. A decision on whether or not a TIF Bond issue is feasible and adequately secured, will be the City's final decision and within the City's sole discretion. The City is under no obligation to issue TIF Bonds and makes no commitment to do so.

EXHIBIT A

LEGAL DESCRIPTION OF CITY CENTER REDEVELOPMENT DISTRICT

Beginning at the Northwest corner of the Northeast Quarter of Section 31, Township 12 South, Range 24 East; thence South along the West line of the Northeast Quarter of said Section 31 to the Southwest corner of the Northeast Quarter of said Section 31; thence East along the South line of the Northeast Quarter of said Section 31 to the Southeast corner of the Northeast Quarter of said Section 31, and continuing East along the South line of the Northwest Quarter of Section 32, Township 12 South, Range 24 East to the Easterly right-of-way line of Renner Boulevard as it now exist; thence North along the Easterly right-of-way line of said Renner Boulevard to the intersection with the South line of the Northwest Quarter of the Northwest Quarter of Said Section 32; thence East along the South line of the Northwest Quarter of the Northwest Quarter of said Section 32, to the intersection with the centerline of Interstate Route 435, as it now exists; thence South along the centerline of said Interstate Route 435 to the South line of the Northwest Quarter of said Section 32; thence East along the South line of the Northwest Quarter of said Section 32, to the Southeast corner of the Northwest Quarter of said Section 32; thence North along the East line of the Northwest Quarter of said Section 32, to the Northeast corner of the Northwest Quarter of said Section 32; thence West along the North line of the Northwest Quarter of said Section 32, to the centerline of Interstate Route 435, as it now exists; thence North along the centerline of said Interstate Route 435 to the North line of the Southwest Quarter of Section 29, Township 12 South, Range 24 East; thence West along the North line of the Southwest Quarter of said Section 29, to the Northwest corner of the Southwest Quarter of said Section 29: thence South along the West line of the Southwest Quarter of said Section 29, to the Northeast corner of the Southeast Quarter of the Southeast Quarter of Section 30, Township 12 South, Range 24 East; thence West along the South line of Stonecreek of Parkhurst 1st Plat, Stonecreek of Parkhurst 2nd Plat, and Estates of Parkhurst 1st Plat, all subdivisions of land in Johnson County, Kansas, to the Northeast corner of Horizons West Re-Plat 3rd Plat, a subdivision of land in Johnson County, Kansas; thence South along the East line of said Horizons West Replat 3rd Plat, and its extension South, to the South line of the Southeast Quarter of said Section 30; thence West along the South line of the Southeast Quarter of said Section 30 to the Point of Beginning, containing approximately 424 acres.

EXHIBIT B
LEGAL DESCRIPTION OF PROJECT PLAN 4C AREA

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF JOHNSON, STATE OF KANSAS, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 12, RANGE 24, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 12 S., RANGE 24 E., JOHNSON COUNTY, KANSAS; THENCE N. 02° 16' 12" W. ON THE WEST LINE OF SAID SECTION A DISTANCE OF 110.00 FEET; THENCE N. 87° 34' 00" E. A DISTANCE OF 50.00 FEET TO A POINT, THIS SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY OF RENNER ROAD, THE WESTERLY RIGHT- OF-WAY OF INTERSTATE ROUTE 435 AND THE TRUE POINT OF BEGINNING; THENCE N. 2° 16' 12"

W. ON SAID EASTERLY RIGHT-OF-WAY A DISTANCE OF 654.54 FEET; THENCE N. 87° 34' 00" E. A DISTANCE OF 535.25 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF INTERSTATE ROUTE 435; THENCE S. 8° 55' 33" W. ON SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 616.62 FEET; THENCE S. 66° 31' 45" W. ON SAID WESTERLY RIGHT-OF-WAY 139.28 FEET; THENCE S. 87° 34' 00" W. ON SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 285.67 FEET TO THE TRUE POINT OF BEGINNING, EXCEPT THAT PART USED OR DEDICATED FOR STREETS , ROADS OR HIGHWAYS.

EXHIBIT C
TIF Reimbursable Costs– Project Plan 4C

The following items are estimated TIF eligible private and public costs for reimbursement with TIF Revenues generated from Project Plan 4C. The priority and duration of reimbursement is set forth in the DDA.

Description of Expenditure	Reimbursement to:	Maximum Reimbursement
TIF Fee	Developer ¹	\$50,000
Itemized Private TIF Reimbursable Costs paid by Developer, excluding the TIF Fee, but including: Land acquisition within the Project Plan area; site development; A/E (excluding vertical buildings owned or leased by the Developer other than parking structures); water mains; surface and structured parking; landscaping, lighting, sidewalks, benches and similar amenities; and private streets.	Developer	\$10,133,956
Itemized Public TIF Reimbursable Costs paid by City, excluding the Annual Administrative TIF Fee, but including: The City's costs associated with the prepaid assessment for Project Plan Area for 87 th St. Pkwy Special Benefit District; land acquisition; infrastructure, parking structures, parks and landscaping.	City	\$4,000,000
Annual Administrative TIF Fee: 0.5% of the annual TIF Revenues reimbursed to Developer	City	TBD
Total Maximum Aggregate of Eligible Private TIF Reimbursable Costs	Developer	\$10,183,956
Total Maximum Aggregate of Eligible Public TIF Reimbursable Costs	City	\$4,000,000 ²
Total Maximum Aggregate of TIF Reimbursable Costs		\$14,183,956³

Notwithstanding any other provision of this Plan to the contrary, reimbursable expenditures shall at all times be consistent with the Act, including judicial interpretation of the Act.

¹ The TIF Fee is based upon 1% of the Private TIF reimbursable Costs in the estimated amount of \$10,133,956 (which amount represents the Total Private TIF Reimbursable Costs less the TIF Fee). This total excludes the Annual Administrative TIF Fee as it is TBD based upon eligible TIF Revenue disbursed. This sum shall be reimbursed to Developer if it has been paid by Developer and if not, it shall be deducted from the first Private TIF Reimbursable Cost payment (and thereafter until paid in full) and paid to the City.

² The amount of the total Public TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.

³ The Total Maximum Aggregate of TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.

TIF Project Plan 4C



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APPENDIX 1
TIF PROJECT PLAN 4C FEASIBILITY STUDY

Year of TIF (1)	Distribution Year (2)	Total Assessed Value (3)	Base Year Assessed Value (4)	Captured Assessed Value (Column 3 - Column 4) (5)	Projected Property Tax Increment (6)
0	2019				
1	2020	\$163,339	\$2,561	\$160,778	\$15,530
2	2021	\$127,034	\$2,561	\$124,473	\$12,023
3	2022	\$127,034	\$2,561	\$124,473	\$12,023
4	2023	\$127,034	\$2,561	\$124,473	\$12,023
5	2024	\$2,384,000	\$2,561	\$2,381,439	\$230,026
6	2025	\$4,768,000	\$2,561	\$4,765,439	\$460,299
7	2026	\$4,863,360	\$2,561	\$4,860,799	\$469,509
8	2027	\$4,960,627	\$2,561	\$4,958,066	\$478,905
9	2028	\$5,059,840	\$2,561	\$5,057,279	\$488,488
10	2029	\$5,161,037	\$2,561	\$5,158,476	\$498,262
11	2030	\$5,264,258	\$2,561	\$5,261,697	\$508,233
12	2031	\$5,369,543	\$2,561	\$5,366,982	\$518,402
13	2032	\$5,476,934	\$2,561	\$5,474,373	\$528,775
14	2033	\$5,586,473	\$2,561	\$5,583,912	\$539,356
15	2034	\$5,698,202	\$2,561	\$5,695,641	\$550,148
16	2035	\$5,812,166	\$2,561	\$5,809,605	\$561,156
17	2036	\$5,928,409	\$2,561	\$5,925,848	\$572,384
18	2037	\$6,046,977	\$2,561	\$6,044,416	\$583,836
19	2038	\$6,167,917	\$2,561	\$6,165,356	\$595,518
20	2039	\$6,291,275	\$2,561	\$6,288,714	\$607,433
Total Projected Property Tax Increment					\$8,242,329

Anticipated Assessed and Appraised Values:		
	Est Appraised Value	Est Assessed Value
Multi-family	\$38,200,000	\$4,393,000
Commercial	\$1,500,000	\$375,000
Totals	\$39,700,000	\$4,768,000

Net Mill Levy	96.591
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Assumptions:

- a) Project is 50% complete on 1/1/2023 (2024 distribution year) & 100% complete on 1/1/2024. Appraised value is \$39.7 million (assessed value is \$4.77 million) upon completion.
- b) Appraised value increases by 2% annually after completion.
- c) Property tax collection rate will be 100%.
- d) Property tax increment is distributed twice each year.
- e) TIF project plan was approved in 2018 and expires in 2038 (distribution year 2039).

**CITY CENTER REDEVELOPMENT (TIF) DISTRICT AS AMENDED
REDEVELOPMENT (TIF) PROJECT PLAN 4C
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “**Agreement**” or “**DDA**”), is dated as of the ____th day of _____, 2020 by and between the **CITY OF LENEXA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”), and **87 Renner, LLC**, a Kansas limited liability company (the “**Developer**”) organized and authorized to do business, and in good standing, in the State of Kansas (the “**State**”). The City and the Developer are sometimes hereinafter collectively referred to as the “**Parties**” and each a “**Party**.”

RECITALS

A. The Lenexa City Council adopted Ordinance No. 4427 on September 11, 2001, establishing a Redevelopment (TIF) District (the “**Original District**”). The Original District was amended on December 20, 2005 by Ordinance No. 4824 to include a total of approximately 424 acres (the “**District**,” also referred to as the “**City Center TIF District**”). The City has identified multiple City Center development projects located within the City Center TIF District.

B. On or about December 18, 2018, the City adopted Ordinance No. 5701 approving and adopting Redevelopment (TIF) Project Plan 4C (the “**Project Plan**” or “**Project Plan 4C**”) located within the City Center TIF District and providing for the redevelopment of an approximately 7.07 acre site located in the northeast corner of 87th Street Parkway and Renner Boulevard (the “**Project Plan Area**” also referred to as the “**Property**”) and for other authorized, eligible improvements within the District. The Project Plan Area is legally described on **Exhibit A** attached hereto.

C. On or about _____, 2020, the City passed Ordinance No. _____ adopting the Amended Project Plan 4C in the City Center TIF District (as amended, the “**Project Plan**” or “**Project Plan 4C**”) increasing the amount of Private TIF Eligible Improvement Costs by \$668,962, adjusting the timeline and updating the feasibility study; and

D. The Project Plan contemplates construction of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, land acquisition, surface parking, landscaping, hardscaping, utilities, sidewalks, and related site amenities, signage and associated infrastructure improvements reflected in the City development approvals described in **Section 3.1** herein (the “**Project**” also referred to as the “**Private Project Improvements**”).

E. Developer, or its successors and assigns as provided herein, is responsible for constructing or causing to be constructed the Private Project Improvements and

annually paying, or causing to be paid, all applicable ad valorem taxes and special assessments, if any, on the Property.

F. As contemplated in the Project Plan, the Parties desire to enter into this Agreement to set forth the terms for the implementation of the Project Plan, and to provide for reimbursement of “**TIF Reimbursable Costs**” which include Private TIF Reimbursable Costs, as that term is defined in **Section 2.2** herein, on a “pay as you go” basis after construction of the Private Project Improvements is completed and TIF Revenues (defined in **Section 1.3** herein) are subsequently received by the City.

G. The Parties acknowledge that Developer also intends to make application to the City for the issuance of industrial revenue bonds to utilize the sales tax exemption on construction materials associated with construction of the project as well as the establishment of a community improvement district over the Project Plan 4C area (“**CID**”). It is anticipated that some of the Private TIF Reimbursable Costs (defined in **Section 2.2** hereof) may also be eligible CID reimbursable costs but such determination will be made at the time of CID approval. For costs that are eligible for reimbursement under both this DDA and the approved CID Development Agreement (as defined below), the Developer shall be required to elect the funding source at the time of its cost certification to the City as described in **Article 5.1** herein and shall not be reimbursed twice for the same cost. City staff supports such CID subject to compliance with State law and Governing Body approval. Further, if a CID is approved, Developer and City shall set forth all terms and conditions for such CID in a separate CID development agreement (the “**CID Development Agreement**”).

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

ARTICLE ONE - PROJECT

Section 1.1 Authority. The City has authority to adopt tax increment financing (“**TIF**”) pursuant to the Kansas Tax Increment Redevelopment Act, codified at K.S.A. 12-1770 *et seq.* (Supp. 2010, *as amended*) (the “**Act**”), to promote, stimulate, and develop the general and economic welfare of the State and its communities. On June 2, 2009, the City’s Governing Body (“**Governing Body**”) adopted Resolution 2009-59, approving an amended TIF Policy codified in the City’s Administrative Procedures Manual at Article GB05-E (the “**Policy**”) and associated administrative TIF Procedures in Article AD05-B (the “**Procedures**”). The Policy and Procedures set out guidelines, criteria and procedures for considering and approving TIF applications and shall apply to the Project Plan.

Section 1.2 Purpose.

The purpose of this Agreement is to implement Project Plan 4C as generally described in the Recitals hereto and the approved development plans and building permits. The district plan for the District (the “**District Plan**”) contemplated construction of a mixed-use

urban development consisting of office, retail, residential and public civic uses, and the associated infrastructure and parking associated therewith. The District Plan contemplates utilizing TIF Revenues to pay for eligible project expenses within specific project areas, including but not limited to, land acquisition, site preparation, street improvements and appurtenances thereto, sidewalks, sewers, utilities infrastructure and other utility improvements, surface and structured parking, landscaping, water mains and plazas.

(a) This Agreement is entered into for the purpose of developing the Property and not for speculation in land holding.

(b) The City has determined that development of the Property pursuant to this Agreement is vital and in the best interest of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable State and local laws.

(c) This Agreement pertains to and affects the ability of the Parties to finance and carry out the purposes of this Agreement and the goals of the Project Plan.

(d) If there are any mortgages or other security interests filed on the Property prior to recording this Agreement or a Memorandum thereof by or on behalf of the Developer, Developer shall obtain and provide to the City such lender's recorded subordination of its mortgage or other security interest to this Agreement and the terms herein and shall indemnify and hold harmless the City regarding the same (the "**Subordination Agreement**"). A copy of such Subordination Agreement shall be recorded and provided to City prior to any assignment of this Agreement and prior to receipt of reimbursement for any Private TIF Reimbursable Costs (as defined herein).

Section 1.3 The Project Plan.

The Project Plan was adopted by the City Council on December 18, 2018 (the "**Effective Date**") by Ordinance No. 5701 and amended on _____, 2020 by Ordinance No. _____ in accordance with State law and a copy is attached hereto as **Exhibit B** and incorporated herein by reference.

The Project Plan is a legislative document of the City. Nothing in this Agreement precludes amendment by the City of the Project Plan without consent of Developer provided the amendment does not decrease the sources or approved amount of TIF Revenues (as defined below) available for reimbursement of Private TIF Reimbursable Costs or reduce the type or amount of Private TIF Reimbursable Costs set forth in this Agreement unless (i) this Agreement is terminated in accordance with **Section 6.5**; (ii) the amendment is requested by Developer; (iii) all Private TIF Reimbursable Costs have been reimbursed to Developer; or (iv) Developer consents to such amendment in writing.

The City shall reimburse Developer for Private TIF Reimbursable Costs incurred by Developer with that portion of the Tax Increment (as defined by the Act) generated from

the Project Plan Area and received by the City from the County Treasurer (the “**TIF Revenues**”) in accordance with the procedure, priority, and duration set forth in **Article Five**, provided Developer is not then in default of this Agreement beyond any applicable cure period, and further provided, however, that if Developer receives any reimbursement from TIF Revenues after Developer is notified that Developer is in default under this Agreement and Developer does not cure such a default before the end of any applicable cure period, then Developer shall repay to the City any reimbursement from TIF Revenues Developer received after Developer received notice of such default.

The Parties understand and agree that the City, in its sole discretion and without consent, may at any time during the term of this Agreement, reduce the size of the District provided, however, that such reduction shall not reduce the Project Plan Area.

Section 1.4 Parties to the Agreement.

(a) The City is a city of the first class exercising governmental functions and powers and organized and existing pursuant to K.S.A. 13-101 et seq. and all amendments thereto, and is acting herein pursuant to the authority of the Act and Article 12, Section 5 of the State Constitution. The principal office of the City is located at the City Hall, 17101 W. 87th St. Pkwy., Lenexa, Kansas 66219.

(b) 87 Renner, LLC, is a limited liability company duly organized, existing and authorized to do business and in good standing in the state of Kansas. The principal office of Developer is located at 1000 Broadway Blvd, 4th Floor, Kansas City, MO 64105. Developer shall annually, upon request of the City, certify to the City that the Developer is a company in good standing in the State.

(c) The Parties are sophisticated buyers and sellers of real property and have participated in the drafting of this Agreement. The Parties covenant and represent that they are fully authorized to enter into and to execute this Agreement and to bind the Parties, and have executed this Agreement after review and consultation with legal counsel.

Section 1.5 Restrictions on Transfer Assignments.

(a) Restrictions on Assignment of Rights and Obligations. The qualifications and identity of Developer are of particular concern to the City. It is because of Developer’s qualifications and identity that the City is willing to enter into this Agreement. Except as otherwise set forth herein, Developer shall not assign, delegate or otherwise transfer (whether voluntarily, by operation of law, or otherwise) the Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. A Change in Control means the sale or transfer of all or substantially all of the assets of a Party; any merger, consolidation or acquisition of a Party with, by or into another corporation, entity or person; or any change in the membership interest in Developer. A Change in Control shall be deemed an assignment by operation of law for the purposes of this provision. Any attempted or purported assignment, delegation or other transfer not in conformance with

this Section shall be void and have no effect and shall constitute a default under this Agreement permitting the City to terminate the Agreement. Subject to the foregoing, the Agreement shall be binding on the Parties' successors and assigns.

(b) Collateral Assignment. Notwithstanding **Subsection (a)** above, Developer shall have the right, without the City's consent, to collaterally assign to any Secured Lender (as defined below) as collateral any and all of Developer's rights and/or obligations under this Agreement. The City shall receive as soon as possible, but not less than thirty (30) days following the date of such collateral assignment, a written notice from Developer that it has entered into a collateral assignment with a Secured Lender in connection with the Property, which notice shall specify the name, address and telephone number of the Secured Lender, as well as the title, date and parties to the collateral assignment agreement. Such Secured Lender shall 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 Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the Developer of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. For purposes of this Section, "**Secured Lender**" means a bank or financial institution from which Developer has borrowed funds to finance all or a portion of the Project and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

Before a Secured Lender may exercise any rights of Developer under the Agreement, the Secured Lender shall provide to the City not less than ten (10) days' notice of the Secured Lender's intent to exercise its right to become the assignee of Developer under this Agreement, which notice shall include the effective date of the collateral assignment, and the title, date and parties to such collateral assignment agreement. The City is entitled to rely upon representations made in the notices described in this Section without further investigation or inquiry.

Provided that Developer has given the City timely written notice of a collateral assignment in accordance with this Section, the City agrees to provide the Secured Lender with the same notice of default at the same time such notice is given to Developer, and the Secured Lender shall have the same rights (but shall have no obligation) to cure, correct or remedy a default as are provided to Developer. If Developer fails to timely notify the City of such collateral assignment, failure of the City to provide a Secured Lender with the notice of default described in this paragraph shall not constitute a default of the City under the Agreement and the City shall have no liability to Developer or Secured Lender for failure to provide such notice. Further, except for providing the same notice of default as described herein, no collateral assignment to a Secured Lender shall increase, limit or otherwise modify the City's rights and obligations as described in this DDA.

(c) Lease of Property. Nothing in this Section shall apply to Developer's lease of portions of the Property to other persons or entities. This Agreement shall not obligate, provide rights, or otherwise apply to any such lessees and any such leases shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the leased Property.

(d) Sale of Property. Nothing in this Section shall limit Developer's right to sell or otherwise transfer the Property or portions thereof to other persons or entities, but such sale or transfer shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the sold or transferred Property, except as otherwise provided in this **Section 1.5**.

(e) Right to Receive TIF Revenue. Only City and Developer or Secured Lender, pursuant to subsection (b) hereof, and not any subsequent purchaser, assignee, or tenant, except as otherwise provided in this **Section 1.5**, shall be entitled to receive TIF Revenue for any purpose.

(f) No Assignment if in Default. Notwithstanding anything in this Section to the contrary, no assignment or transfer of this Agreement is permitted if Developer has not first obtained a subordination of any mortgage or security interest entered into prior to the recording of this Agreement or a Memorandum thereof, or is otherwise in default in the performance of any of the material terms, covenants, conditions and agreements of this Agreement.

(g) City Costs. Developer shall be responsible for all City fees, including but not limited to the actual and reasonable professional consultant fees, if any, associated with a request for City action associated with any assignment under **Section 1.5** or estoppel certificate under **Section 1.6** herein. The Parties agree that the City is entitled to deduct such fees and costs from remaining funds, if any, in the \$10,000 TIF retainer (the "**TIF Retainer**") previously submitted by Developer. If there are no funds remaining in the TIF Retainer or if the City has refunded to the Developer the balance of the TIF Retainer, then at the City's discretion, the City may require Developer to submit an additional retainer before commencing such work.

Section 1.6 Estoppel Certificate. Within thirty (30) days of the City's receipt of a written request from Developer, the City shall execute, acknowledge, and deliver a statement certifying that to the best of its knowledge but without any independent investigation: (a) this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as amended); (b) all sums required to be paid by Developer to the City under the terms of this Agreement due on or prior to the date of the statement have been paid in full; and (c) the City has not given any currently outstanding notices to the Developer or to any other party asserting any breach or violation of, or default under, any of the provisions of this DDA or any other documents relating to the Private Project Improvements. Developer shall be responsible for any City fees associated with the City's preparation and issuance of such estoppel certificate up to a maximum amount not to exceed \$1,500.

ARTICLE TWO - TIF PROJECT

Section 2.1 Project Improvements.

(a) Developer shall construct or cause to be constructed the Private Project Improvements in substantial compliance with the Development Plan (hereinafter defined in **Section 3.1**), the City Code, and the Project Schedule set forth in **Section 3.3**.

Section 2.2 TIF Reimbursable Costs.

(a) The costs incurred as a result of the Private Project Improvements constructed, or caused to be constructed, by Developer which are eligible for TIF reimbursement include, but are not limited to: land acquisition, architectural and engineering costs (except those associated with vertical construction of non-parking structure buildings owned or leased by Developer); site preparation and development; utilities infrastructure, parking, lighting, landscaping, and other associated infrastructure, hardscape and associated amenities; construction interest; and the TIF Fee (collectively, the “**Private TIF Reimbursable Costs**”). The Private TIF Reimbursable Costs are described in more detail on **Exhibit C**, attached hereto and incorporated herein by reference. All Private TIF Reimbursable Costs must be consistent with the Act and the City’s Policy & Procedures. The City shall reimburse Developer from TIF Revenues for Private TIF Reimbursable Costs paid by the Developer pursuant to **Article Five** of this Agreement.

Cost estimates for the Private TIF Reimbursable Costs have been submitted by Developer and the City is entitled to rely on the estimated costs without making any independent investigation. Subject to available TIF Revenues received by the City and the provisions of this DDA, including but not limited to **Section 2.3** and **Article Five** herein, Developer may be reimbursed for individual line items of Private TIF Reimbursable Costs set forth on **Exhibit C** in higher amounts than the estimates set forth thereon, subject to the aggregate maximum amount of Total TIF Reimbursable Costs set forth on **Exhibit C**. With the consent of the City, which shall not be unreasonably withheld, Developer may also be reimbursed for items not listed on **Exhibit C**, to the extent permitted under the Act and the City’s Policy & Procedures, and subject to available TIF Revenues and the aggregate maximum amount of TIF Reimbursable Costs set forth on **Exhibit C** attached hereto.

(b) Developer may make other improvements to the Property that may be eligible for TIF financing under the Act, but if such costs are not included on **Exhibit C** as Private TIF Reimbursable Costs, such costs shall be considered “**Non-TIF Reimbursable Costs**” and not entitled to reimbursement, except where the City otherwise expressly consents, which consent shall not be unreasonably withheld. In accordance with the City Policy and Procedures, and consistent with **Exhibit C**, Non-TIF Reimbursable costs include, but are not limited to: Costs of buildings or structures (excluding parking structures) to be owned or leased to Developer; tenant improvements costs; Developer attorney fees; Developer financial advisor fees; bond origination fees; real estate commissions paid; and Developer’s consultant fees (with the exception of architectural and engineering associated with infrastructure improvements); soft costs such as marketing and relocation costs; excise taxes and property taxes; and all development

fees, licenses and taxes paid to the City, State or other governmental entity (with the exception of the TIF Fee as defined in **Section 3.4** herein).

(c) The Project Plan also contemplates reimbursement to the City with TIF Revenues for public improvements including but not limited to special assessments associated with the 87th Street Special Benefit District which the City prepaid for the Property pursuant to a Participation Agreement between Renner Development Company, LLC and the City dated November 20, 2007 (the “**87th Street SBD Prepayment**”); infrastructure improvements related to the 87th Street Parkway and I-435 interchange improvement project; public parking structures within the District; land acquisition costs within the District; landscaping improvements associated with 87th Street Parkway and I-435 Interchange; 87th Street Parkway traffic signal improvements within the District; and public park improvements within the District (the “**Public TIF Reimbursable Costs**”). Reimbursement of the Public TIF Reimbursable Costs is subject to the priority, amount and duration as described in **Article Five** herein. Together, the Private TIF Reimbursable Costs and the Public TIF Reimbursable Costs are referred to as the “**TIF Reimbursable Costs**”.

Section 2.3 Reallocation of Line Items

If, at the time Developer submits any Request for Certificate of Completion the aggregate amount previously certified for reimbursement for any Private TIF Reimbursable Cost line item, together with the amount for which certification is sought in such Request for Certificate of Completion for such reimbursable line item, exceeds the reimbursable amount set forth in **Exhibit C** for such line item, then Developer to the extent that the total amount certified for Private TIF Reimbursable Costs previously, together with the amount of Private TIF Reimbursable Costs for which certification is requested in the current Certificate of Completion, does not exceed the maximum aggregate amount of Private TIF Reimbursable Costs set out in **Exhibit C**; then Developer shall have the right to reallocate such amount of the Private TIF Reimbursable Costs in the **Exhibit C**.

Section 2.4 When TIF Reimbursement Not Required. The City has no obligation to reimburse Developer for Private TIF Reimbursable Costs in excess of TIF Revenues received by the City from the Project Plan Area or beyond the duration agreed to in **Section 3.5** herein, regardless of whether or not there are unreimbursed Private TIF Reimbursable Costs remaining. The City shall have no reimbursement obligation during any period in which Developer is in default of this Agreement beyond any applicable cure period or if this Agreement has been terminated in accordance with the terms hereof, or otherwise invalidated by a court of competent jurisdiction.

Section 2.5 Time is of the Essence. The Parties agree that time is of the essence in performing the obligations under this Agreement

ARTICLE THREE – PROJECT DEVELOPMENT

Section 3.1 Scope of Development.

(a) The Property shall be developed in accordance with the Project Plan, and within the general controls established in the approved development plans for the Private Project Improvements, including: PL18-19P – the preliminary plan for the Project which was approved by the City on October 16, 2018 as the forgoing may be revised by Developer from time to time, subject to approval of the City in accordance with its development review and zoning processes (the "**Preliminary Development Plan**"), which documents shall be incorporated herein by reference. A copy of the site plan and rendering included in the approved Preliminary Development Plan is attached hereto as **Exhibit D** to reflect the proposed improvements contemplated by the Project Plan (the "**Site Plan**"). In accordance with City Code, Developer shall make application for and receive final approval prior to commencing construction on all or a portion of the Private Project Improvements (the "**Final Development Plan**"). Upon City approval of a Final Development Plan, such Final Development Plan is incorporated into this DDA by reference. Collectively, the Preliminary Development Plan and the Final Development Plan constitute the "**Development Plan**".

(b) Developer shall construct the Project utilizing high quality architectural design and materials in accordance with Development Plan approvals by the City, and the Project shall be consistent with the approved Final Development Plan.

(c) Definitions:

- (1) For purposes of this Article, "**commencement of construction**" shall be defined to mean the commencement of site work.
- (2) For purposes of this Agreement, "**substantial completion**" or "**substantially complete**" or "**complete**" shall be defined to mean when the work is sufficiently complete, in accordance with the plans and applicable City codes, so that the work can be utilized for the purposes for which it was intended. Substantial completion may not require evidence of a Temporary Certificate of Occupancy ("**TCO**") or final certificate of occupancy for all or any portion of the work if the work can be utilized for such purposes.

(d) After approval of the Project Plan, approval and execution of this DDA, and receipt of any required City development approvals and permits, Developer shall begin and thereafter diligently prosecute to complete the construction of the Project in accordance with the Project Schedule set forth in **Section 3.3** hereof. The Developer shall commence construction and development within the time specified herein or such reasonable extension of said date as may be granted by the City as provided herein, and Developer shall diligently pursue it to completion. The timing of development set forth in **Section 3.3** is subject to revision from time-to-time as mutually agreed upon in writing between Developer and the City and is subject to the provisions herein.

Section 3.2 Progress Reports. During the term of this Agreement, upon the written request of the City, Developer shall submit to the City Administrator or his

designee written reports of the progress of the construction of the Project. Such request shall not be made more frequently than every six (6) months.

Section 3.3 Schedule. Developer shall commence or cause to be commenced construction of the Project according to the following schedule and shall thereafter diligently pursue work on the Project:

(a) Developer shall commence or cause to be commenced construction of the Private Project Improvements no later than December 31, 2021 and the Project shall be substantially complete, as evidenced by a certificate of occupancy or temporary certificate of occupancy on or before December 31, 2023 (the “**Project Schedule**”); and

(b) The Developer and City further agree that the commencement, prosecution and completion of the Private Project Improvements and construction under the Project Schedule shall be subject to **Section 7.1** of this Agreement. In addition to adjustments as a result of an Excused Delay under **Section 7.1**, the Developer and City Administrator may agree, in writing, to minor adjustments to the Project Schedule set forth above; provided, however, that any adjustment(s) to the Project Schedule that change the Project Schedule by more than sixty (60) days, other than as a result of an Excused Delay, may in the City Administrator’s discretion require an amendment by the Governing Body. Provided the Developer is diligently prosecuting the work, nothing in this Section shall prohibit the Developer from commencing the Project earlier than the date indicated in the preceding paragraph, and prosecuting the substantial completion of the Project in accordance with the City approved plans in a timely fashion to Completion. Expiration of the permit under which the Project is being constructed without reaching substantial completion of the work shall be deemed a failure to diligently pursue construction but this is not an exclusive basis upon which such determination may be made.

(c) The Private Project Improvements contemplate construction of a multi-story apartment loft building consisting of approximately 250 units and approximately 10,000 square feet of retail, land acquisition, surface parking, landscaping, hardscaping, utilities, sidewalks, and related site amenities, signage and associated infrastructure improvements (the “**Project Plan 4C Development**”). Notwithstanding the foregoing, this provision does not modify or amend any Development Plan amendments or approvals that may be required by City Code.

Section 3.4 Development Performance Standards.

Developer is required to satisfy the following Performance Standards (the “**Performance Standards**”) which are considered material to this Agreement or Developer will be considered in default of this Agreement:

(a) Payment of the TIF Fee and City’s Annual Administrative Service Fee. In accordance with the City TIF Policy and Procedures, Developer is responsible for the TIF Fee which is a non-refundable amount equal to 1% of the total TIF Revenues estimated to be reimbursed to Developer pursuant to this Agreement, not to exceed \$50,000. The TIF Fee for this Project is \$50,000 and is based upon the approved maximum aggregate

of Private TIF Reimbursable Costs (the “**TIF Fee**”). The TIF Fee is included as a Private TIF Reimbursable Cost and is to be paid as follows:

- (1) Payment of the \$2,500 TIF application fee and required retainer. The Developer has paid the \$2,500 application fee and TIF Retainer with the submission to the City of Developer’s application requesting approval of a Project Plan. The City acknowledges that this Performance Standard has been satisfied.
 - (2) Payment of the Redevelopment Project Plan Approval Fee. Within ten (10) days after the Governing Body’s approval of the Project Plan and receipt by Developer of an invoice from the City, Developer shall pay an amount equal to the lesser of 25% of the TIF Fee or \$7,500 (the “**Project Plan Fee**”). It is estimated that the Project Plan Fee for this Project will be \$7,500. Developer shall advise the City in writing if it would like the balance of the TIF Retainer (if any remains after payment of City Costs incurred to date as set out in **Section 1.5(g)**) to be applied to the Project Plan Fee. If no such direction is provided by Developer, the City will return the balance of the TIF Retainer, if any, to Developer within sixty (60) days after approval of the TIF Project Plan.
 - (3) Balance of TIF Fee. In order to reimburse the City for the remaining balance of the TIF Fee, which is estimated at \$40,000, shall be paid by Developer with the first Private TIF Reimbursable Cost disbursement. If there are not sufficient funds in the first Private TIF Reimbursable Cost disbursement, the City is authorized to continue to deduct the balance of the TIF Fee from each subsequent disbursement until paid in full; and
 - (4) Annual Administrative Fee. The annual administrative service fee of one-half of one percent (0.5%) of the annual TIF Revenues actually reimbursed to Developer or its assigns for Private TIF Reimbursable Costs (the “**City’s Annual Administrative Fee**”) shall be deducted by the City from TIF Revenues before disbursement of the remaining TIF Revenues. The City’s Annual Administrative Fee is not an eligible Private TIF Reimbursable Cost.
- (b) Lender Commitment. Upon request, and after submitting for a building permit or otherwise commencing construction of the applicable Private Project Improvements, Developer shall provide to the City’s Financial Advisor a copy of a letter from a potential lender or lenders containing a commitment to finance the applicable Private Project Improvements, or alternatively, a commitment to finance a substantial portion of the applicable Private Project Improvements provided evidence of sufficient private equity is available to complete the balance of the applicable Private Project Improvements. If the potential lender is not a banking institution or financial institution, the lender must also provide documentation of its ability to provide such financing. The City agrees that it shall keep confidential such letter and any other financial information related to Developer absent a Court Order (provided, however, that Developer shall be promptly notified of any such required disclosure prior to the City making such disclosure, so that Developer may seek a protective order or otherwise seek to prevent or limit such

disclosure), and the City shall cause the City's Financial Advisor to keep the letter and financial information confidential, including, without limitation, not disclosing them to the City. Any financial information located within the public record as part of Governing Body approved documents or included in Developer's TIF application submitted to the City (excluding the financial information submitted directly by Developer to the City's Financial Advisor) is not covered by this provision.

(c) Developer must be in substantial compliance with **Sections 3.3** and **3.4** hereof.

(d) In accordance with **Section 4.4** and subject to Developer's opportunity to cure set forth in **Section 6.1(d)**, Developer shall not be delinquent on any of the ad valorem real property taxes or special assessments assessed against real property in the City owned by Developer. Notwithstanding anything to the contrary herein and subject to the provisions of **Section 4.4**, the Developer and its successors shall have the right to pay any and all taxes and special assessments under protest in accordance with applicable law without violating any provision hereof.

(e) For the duration of the TIF Term (defined in **Section 3.5** herein), Developer shall not be delinquent on any City fees associated with the Project, including but not limited to City TIF fees, CID fees, the City Costs described in **Section 1.5(g)** herein, development fees, and shall be in compliance with all City Codes including the property maintenance codes applicable to the Property, subject to Developer's right to notice and cure under **Section 6.1(c)** hereof. Developer's obligation under this **Section 3.4(e)** does not restrict Developer from challenging the legality of any Code provision or any fee first levied against the Property or portion thereof or the Developer by the City after the execution of this Agreement.

(f) Civic Involvement. The granting of economic development incentives is a discretionary decision of the City and is granted to promote, stimulate and develop the general and economic welfare of the quality of life in the City; therefore, civic and community involvement of any applicant receiving Private TIF Reimbursement is important to the City. During the TIF Term, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development activities of the City. At a minimum, Developer shall perform the following: (1) at all times during the Developer TIF Term (defined in **Section 5.2(c)** herein), be a dues-paying member in good standing with the Lenexa Chamber of Commerce; (2) during the Developer TIF Term make an annual contribution to the Lenexa Foundation in an amount solely determined by Developer, but not less than 0.5% of the annual distribution of TIF Revenues for Private TIF Reimbursable costs; and (3) during the Developer TIF Term, shall annually sponsor a minimum of one City festival, event or activity at any sponsorship level. Each item (1) through (3) in this paragraph constitutes a separate performance requirement (a "**Civic Obligation**"). The annual contribution to the Lenexa Foundation must occur prior to the first TIF distribution of the year and shall be calculated based upon the TIF Revenues generated by the tax bill issued by the County in November of the calendar year prior to the distribution year. Payment of the sponsorship must occur no later than June 1 of the distribution year. Neither the Lenexa Foundation contribution nor the sponsorship are

considered a TIF eligible expense and neither may be deducted from the TIF disbursement.

Section 3.5 TIF Term. The “TIF Term” shall begin on the date the Project Plan 4C is approved and terminate upon the earlier to occur of: (a) twenty (20) years from the date on which Project Plan 4C is approved; (b) reimbursement of all TIF Reimbursable Costs; or (c) termination of Project Plan 4C pursuant to **Section 6.5** hereof.

Section 3.6 Project Cost. The cost of developing, constructing, improving and operating the Project shall be the sole responsibility of Developer; provided, however, that the City shall make reimbursement to Developer in accordance with this Agreement for Private TIF Reimbursable Costs with TIF Revenues received by the City, provided Developer is not in material default of the Agreement beyond any applicable cure period.

Section 3.7 City and Other Permits. Before commencing construction, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be reasonably required before commencing construction by the City and any other governmental agency having jurisdiction as to such construction, development or work.

ARTICLE FOUR: ADMINISTRATION

Section 4.1 Rights of Access & Inspection.

(a) For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, upon reasonable notice not less than 24 hours' prior to such access, without charges or fees, at normal construction hours during the period of construction, including, but not limited to the inspection of the work being performed in constructing the Project. Such representatives of the City shall check in with the Construction Superintendent in the Project Trailer, and shall conform their conduct to the requirements of the safety program in effect at the Project, shall at all times carry proper identification, shall insure their own safety, shall assume the risk of injury, and shall not interfere with the construction activity unless such activity is in violation of this Agreement, City Code, State or federal regulations, statutes or other law. This provision shall not preempt the City's exercise of its police powers to access the Project in accordance with local, state or federal law.

(b) For a period of five (5) years after receiving a Certificate of Completion, Developer shall maintain records and supporting documentation associated with the Private Project Improvements, customarily retained by a reasonable contractor performing similar work, and Developer agrees to make such documents available for inspection by the City upon written request with reasonable notice to Developer.

(c) The City has the right to inspect, at reasonable times and for a period of five (5) years after receiving a Certificate of Completion, the books and records of Developer pertaining to the Project as pertinent to the purposes of this Agreement, including but not limited to construction contracts and invoices documenting requests for reimbursement of Private TIF Reimbursable Costs.

Section 4.2 Local, State and Federal Laws. Developer shall carry out the provisions of this Agreement in conformity with all applicable local, state and federal laws and regulations.

Section 4.3 Anti-discrimination. Developer, for itself and its successors and assigns, agrees that in the construction of the Project, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 4.4 Taxes & Assessments. Subject to **Section 6.1(d)**, for the duration of the TIF Term, Developer or its assigns shall pay or cause to be paid, prior to delinquency, all real estate taxes and assessments, if any, levied against the Property, all other real property owned by Developer in the City, or Developer shall be in default of this Agreement. Notwithstanding this paragraph, Developer or its assigns shall have the right to pay said taxes under protest in accordance with applicable law. Developer or its assigns shall promptly notify the City in writing of a protest of real estate taxes or valuation of any portion of this Property prior to the City's first annual distribution of TIF Revenue reimbursement, for the then current year, after the appeal is filed but in no event later ten (10) days after filing the appeal. In the event of an appeal of ad valorem taxes or valuation of the Property the disbursement of TIF Revenues shall be modified as set forth in **Section 5.2** herein.

If as a result of Developer's protest, there is a reduction of the assessed valuation of the Property below the Total Assessed Value amount at substantial completion of the applicable Private Project Improvements, which Total Assessed Value amount is identified in Column 3 of the feasibility study upon which the Project Plan is based, such reduction will potentially result in Developer's inability to receive full reimbursement for all Private TIF Reimbursable Costs set forth in **Exhibit C**.

ARTICLE FIVE: REIMBURSEMENT OF TIF REIMBURSABLE COSTS

Section 5.1 Certificate of Completion.

Reimbursement shall only be made to Developer after the City's issuance of a Certificate of Completion for a definable portion of the Project associated with the Private TIF Reimbursable Costs for which reimbursement is sought, substantial compliance with the Project Schedule, Performance Standards, and receipt by the City of acceptable documentation of such Private TIF Reimbursable Costs pursuant to this **Article Five** and **Exhibit G** hereof, and deduction of the City Annual Administrative Fee, and if applicable, the TIF Fee.

For purposes of this Article, "**a definable portion thereof**" means, with respect to the Project, the earlier of (i) substantial completion of the construction of any stand-alone building along with any associated improvements required under the public zoning and other land use approvals and documents, which may include items such as infrastructure, parking, sewers, sidewalks, streets, utilities, and lighting (the "**Associated**

Improvements") or (ii) the issuance of a temporary certificate of occupancy for 50% of the Private Project Improvements. "A definable portion thereof" may also include a smaller or more discrete portion of work associated with the Project, as determined by the City Administrator. If an improvement is partially completed in a manner which results in the material risk of physical damage to the Project, is unsightly, results in inability for the public and/or tenants (as the case may be) to utilize that portion of the improvement which is completed, or materially violates City ordinances or permits then the portion completed shall not be eligible for a Certificate of Completion until the additional improvements are made. If any of the improvements require additional improvements to be constructed contemporaneously or prior to receipt of permits, then all such items must be substantially completed to constitute a definable portion thereof.

(a) Any request for a Certificate of Completion shall include a description of the Project, or definable portion thereof, for which the certificate is requested and an affidavit of Developer certifying: (1) that the Project, or definable portion thereof, is substantially complete; (2) the costs of the substantially completed work that constitute Private TIF Reimbursable Costs; (3) that, to affiant's actual knowledge, construction was in accordance with all applicable laws and codes; (4) that the costs were incurred in furtherance of the Project and complete a definable portion of the Project as contemplated by this **Section 5.1**, and that the costs have not previously been submitted for CID, TIF or other City reimbursement; (5) that Developer's contractor has no actual knowledge of outstanding or anticipated liens for the work constructed and Developer has no actual knowledge of Developer's contractor's intent to file a lien; and (6) that, to affiant's actual knowledge, Developer is not in material default under this Agreement (the "**Developer Affidavit**"). The Developer Affidavit form is attached as **Exhibit E**. Notwithstanding anything to the contrary, the existence of a lien or an intent to file a lien shall not be the basis of the City refusing to reimburse Developer for any Private TIF Reimbursable Costs, except that City shall have the right to temporarily withhold an amount of reimbursements equal to the amount of the lien or threatened lien until the earlier of (i) the lien has been discharged or (ii) the City is reasonably satisfied that the lien or threatened lien is not going to adversely affect the City.

(b) Upon the City's receipt of a request for Certificate of Completion from Developer, the City shall, physically inspect the completed Project, or a definable portion thereof, for which the Certificate of Completion is requested. If such Project, or definable portion thereof, is complete and appears to be in compliance with City Codes and the City has not notified Developer of an event of default which has not been cured, then the City will issue a Certificate of Completion which confirms that the Private TIF Reimbursable Cost is eligible for reimbursement in accordance with this Agreement to the extent TIF Revenues are available. This Certificate of Completion shall not relieve Developer of constructing the improvements in accordance with local, state and federal laws and regulations, completing the improvements and achieving final Completion, nor should it be relied upon by any person or entity.

(c) The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any tenant, any holder of any deed of trust securing money loaned to finance the Project; nor does it substitute for

Developer's need to receive any other City permits or certificates of occupancy, or Governing Body acceptance of public improvements.

Section 5.2 Reimbursement Procedures.

(a) Developer shall only be reimbursed for Private TIF Reimbursable Costs and only after receipt of a Certificate of Completion, as described in **Section 5.1**. Reimbursement shall only be made with TIF Revenues received by the City and deposited by the City in a separate, segregated account of the City (the "**City Center Project Plan 4C Fund**") and for the duration set forth in this Agreement, including **Exhibit C**. All TIF Revenues received by the City shall be deposited in the City Center Project Plan 4C Fund. The City is under no obligation to provide financial assistance in excess of the available TIF Revenues from the Project Plan Area, including but not limited to (1) where the TIF Revenues do not meet the estimates in the feasibility analysis or Developer does not construct substantially the same project upon which the feasibility analysis was based; (2) the TIF Revenues do not fully reimburse the Private TIF Reimbursable Costs submitted by Developer; (3) the Developer TIF Term expires pursuant to **Subsection (c)** herein, (4) this Agreement is otherwise terminated in accordance with the terms hereof; or (5) Developer fails to meet the requirements of **Section 3.3**.

(b) Reimbursement of Private TIF Reimbursable Costs will be made available on a "Pay-As-You-Go" basis with available TIF Revenues. The City will not issue full faith and credit TIF bonds. The City does not anticipate issuing special obligation TIF Bonds ("**TIF Bonds**"); provided, however, that upon the future request of Developer, the City shall reasonably consider any such request to issue TIF Bonds if the market can feasibly support such a bond issue and if the TIF Revenues and any other collateral provided for such TIF Bonds provide reasonable assurance that the principal of and interest on the TIF Bonds will be paid on a timely basis. A decision on whether or not a TIF Bond issue is feasible and adequately secured will be the City's final decision and within the City's sole discretion. The City is under no obligation to issue TIF Bonds and makes no commitment to do so.

(c) Priority. The City shall make reimbursements in accordance with the amounts, priority and duration set forth in **Exhibit C** and the provisions of this DDA:

- The City shall receive the first priority for payment of the City Annual Administrative Fee and City Annual TIF Fee which shall be deducted from the TIF Revenues prior to any other disbursement.
- The City shall receive full payment of its TIF Fee prior to any other disbursement to Developer.
- The City shall receive 100% of the TIF Revenues relating to each calendar year until the City receives \$481,703.00 for the 87th Street SBD Prepayment.
- After reimbursement to the City of the 87th Street SBD Prepayment and provided Developer is not otherwise in material default of this Agreement beyond any applicable cure period, upon receipt of a Certificate of Completion

for a definable portion as defined in **Section 5.1**, the Developer shall receive 100% of the TIF Revenues, excluding the City Annual Administrative Fee, for twelve (12) consecutive years and then 50% for one (1) year (the “**Developer TIF Term**”). In no event will reimbursement to the Developer extend beyond the Developer TIF Term. During the Developer TIF Term, the remaining 50% of TIF Revenues available in the final year shall be disbursed to the City to reimburse the City for its Public TIF Reimbursable Costs.

- Following the Developer TIF Term, the City shall receive 100% of the TIF Revenues to reimburse the City for its Public TIF Reimbursable Costs until the earlier of reimbursement of all Public TIF Reimbursable Costs or the end of the TIF Term.

(d) Reimbursement to Developer:

- (1) Prior to receiving reimbursement, Developer must apply for and receive a Certificate of Completion and submit to the City’s Chief Financial Officer (the “**CFO**”) copies of all invoices supporting its request for reimbursement in such detail as may reasonably be requested by the CFO, accompanied by a Certificate of Expenditures for the associated costs, which approval will not be unreasonably withheld. The Certificate of Expenditures form is included as **Exhibit F**. Invoices must comply with the provisions set forth in **Exhibit G**, attached hereto and incorporated herein by reference. The invoice or other supporting documentation must identify the Project, or definable portion thereof for which reimbursement is sought and clearly state the amount of reimbursement requested. Invoices may be submitted no more than biannually. Developer shall provide lien waivers in such form, and accompanied by such other information as is reasonably requested by the City to evidence that the reimbursement is permitted. The CFO shall rule on the eligibility of the Certificate of Expenditures as soon as possible but no later than sixty (60) days after the submittal, and if he/she fails to do so, the cost is deemed ineligible. If the CFO determines the nature or amount of the request for reimbursement is outside the scope of this Agreement, or otherwise denies the request (including any denial resulting from the CFO’s failure to rule on eligibility within sixty (60) days of the submittal), Developer may appeal the decision to the Governing Body by filing with the City Clerk, a written request for an appeal within seven (7) days of the CFO’s written denial. Any reimbursement of the disputed portion of any payment shall be stayed pending a final determination by the Governing Body of any appeal; provided, however, that the balance shall be paid in the normal course. The Governing Body shall act reasonably and in good faith when making such decisions, and the Parties agree that the determination of the Governing Body shall be a final decision.
- (2) After approval of the invoice and the Certificate of Expenditures, the City shall make disbursement to Developer in accordance with the priorities

and duration set forth in **Exhibit C** and subparagraph (c) herein, within thirty (30) days after the City receives the TIF Revenues from Johnson County, Kansas and deposits the applicable TIF Revenues. Regardless of the entity making improvement to the Property or the entity that controls Property ownership, during the term of this Agreement, disbursement of the TIF Revenue for Private TIF Reimbursable Costs shall be made to Developer, unless the Parties agree in writing to disburse the TIF Revenues to a third party, in which case, disbursements to a third party shall be deemed a disbursement to the Developer for purpose of determining the maximum of Private TIF Reimbursable Costs and all other purposes of this Agreement.

(e) Disbursements: The City receives ad valorem tax payments from Johnson County, Kansas two times per year. All disbursements for approved Private TIF Reimbursable Costs shall be made by the City from the City Center Project Plan 4C Fund against approved Certificates of Expenditures submitted to the City in accordance with the provisions contained herein. Such disbursements shall be made biannually within thirty (30) days after the City's receipt of the ad valorem tax payment from the County. Disbursements will only be made electronically through the automated clearinghouse ("**ACH**") or similar City-approved payment method. Developer shall submit to the City the necessary financial information as required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by state and federal law. The City shall have no liability to pay any Private TIF Reimbursable Costs from any source except from TIF Revenues received from the County in accordance with the Act.

Notwithstanding anything in this Agreement to the contrary, in any year in which ad valorem taxes are appealed, the City shall make a good faith determination of the amount of TIF Revenues subject to appeal (the "**Disputed Amount**") and the amount of TIF Revenues that would remain if Developer's appeal is successful (the "**Undisputed Amount**"). The City agrees to disburse 100% (or 75% of if the appeal is within 3 years from the date on which the Developer TIF Term expires) of the Undisputed Amount. Once a final determination on the appeal has been made and assuming the appeal is successful, the City agrees to disburse to Developer the remaining balance of the Undisputed Amount that would apply to the new valuation. If the City was incorrect in its good faith determination and the "Undisputed Amount" was greater than the actual tax liability based on the new valuation, the City shall credit the amount of the TIF Revenue disbursed in excess of the new valuation from the following years' TIF Revenue distribution or if there is no distribution to be made or all or a portion of the Property for which taxes were paid has been sold or assigned, the Developer will return the amount of TIF Revenues Developer received from the City in excess of the actual tax liability based on the new valuation. If the appeal is not entirely successful, the City agrees to distribute 100% of TIF Revenues received attributable to any portion of the Disputed Amount which the Developer paid as a result of the appeal not being entirely successful.

Section 5.3. Reimbursement of Tenant or Purchaser incurred TIF Reimbursable Costs. Notwithstanding anything in this Agreement to the contrary, in the event that

a tenant or purchaser of a portion of the Property completes a definable portion of the Project and as a result incurs Private TIF Reimbursable Costs, Developer shall be entitled to reimbursement of such Private TIF Reimbursable Costs so long as such costs have not been previously reimbursed or the right to such reimbursement has not otherwise been assigned by Developer, with TIF Revenues, or other City funds, and further provided the Developer is not in material default of this Agreement beyond any applicable cure period, and Developer submits a Certificate of Completion, invoices and other supporting documentation in accordance with the provisions of this Agreement and **Exhibit G** attached hereto.

Section 5.4. City's Right to Make Additional TIF Reimbursements. The City, at any time during the term of this Agreement after the City has issued a Certificate of Completion for all of the Private Project Improvements, shall have the right to pay Developer an amount equal to all Private TIF Reimbursable Costs owed to Developer under this Agreement pursuant to **Exhibit C** and approved in the Certificate of Expenditures and thereafter terminate this Agreement in accordance with **Section 6.5(c)**. Thereafter, the City may also elect to terminate this Agreement for convenience and/or terminate or otherwise amend the Project Plan in accordance with the Act. In addition, the City also reserves the right but is not obligated to utilize other available and eligible tax increment within the District, if any, to reimburse Developer for its Private TIF Reimbursable Costs.

ARTICLE SIX - DEFAULTS & REMEDIES

Section 6.1 Defaults.

(a) Subject to any extensions granted in accordance with this Agreement, failure by either Party to perform any term or provision of this Agreement, after receiving notice from the other Party and failing to cure such failure within the time periods provided in **Section 6.1(c)** below constitutes an event of default under this Agreement.

(b) A Party claiming a default ("**Claimant**") shall give written notice of default to the other Party as set out in **Section 7.4** herein, specifying such default.

(c) Claimant shall not institute proceedings against the other Party, or take any action to terminate this Agreement, or be entitled to damages, if the other Party within fourteen (14) days from receipt of such notice commences to cure, correct or remedy such failure and shall complete such cure, correction or remedy within thirty (30) days from the date of such notice unless otherwise provided herein or unless such defaulting Party has commenced and is diligently working to cure the default and the time period necessary to cure is longer than thirty (30) days, in which case such cure period shall continue as long as reasonably necessary to allow for cure.

(d) Notwithstanding any provision herein to the contrary, if Property's ad valorem real property taxes or special assessments for the Private Project Improvements have not been paid when due, upon written notice by the City of such delinquency sent

to the Developer in accordance with **Section 7.4** herein, the Developer shall pay or cause to be paid such taxes and special assessments within five (5) business days after receipt of such notice. Developer's failure to pay or cause to be paid such taxes and special assessments within such five (5) business day period shall constitute an event of default under this Agreement. The notice and cure rights set forth in this subsection shall only apply to the first two (2) instances where the taxes and special assessments for the Property are not timely paid. Any additional instances where such taxes and special assessments are not timely paid shall constitute an event of default under this Agreement, with no notice and cure rights under this subsection. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer from contesting the assessed value of the Property or the taxes thereon, or any special assessment levied against the Property after execution of this Agreement; provided however, that Developer shall pay any and all amounts that are contested with respect to the Property under protest while any such proceedings are pending. Developer shall also notify the City in accordance with **Section 4.4** herein anytime it chooses to appeal the assessed valuation of the Property or any portion thereof. An appeal of assessed value that reduces the assessed value of the Property below the amount set forth in the feasibility study upon which Project Plan 4C is based will potentially result in Developer's inability to receive reimbursement for all TIF Reimbursable Costs set forth in **Exhibit C**.

(e) The following shall constitute an event of default under this Agreement: 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 their 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 sixty (60) consecutive days.

(f) The following shall constitute an event of default under this Agreement: the commencement by the Developer, any member of the Developer of a voluntary case, by it 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, 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 in furtherance of any such action.

Section 6.2 Legal Actions.

(a) Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas. Neither Party shall be entitled to attorney fees as a result of litigation relating to or arising out of this Agreement. Neither Party shall at any time be liable for lost tax revenues or lost profits for any action arising under this Agreement or the transactions contemplated hereby.

(b) This Agreement is entered into, under and pursuant to, and is to be interpreted, construed and enforceable in accordance with the laws of the State.

Section 6.3 Rights and Remedies are Cumulative. Both Parties shall have available to it all remedies at law and equity. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 6.4 Waivers.

(a) Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(b) All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

Section 6.5 Termination.

(a) If Developer does not commence construction of the Project on or before the time required by **Section 3.3** hereof, unless otherwise extended by written agreement of the Parties, or fails to thereafter diligently pursue the Project to completion, the City shall have the right to terminate this Agreement without any further right to cure.

(b) Upon reimbursement of all Private TIF Reimbursable Costs or the expiration of the Developer TIF Term, whichever occurs first, this Agreement, by its terms, shall terminate and have no further force or effect. Notwithstanding the foregoing, the following provisions shall survive such termination: **Section 3.3(d)**, **Section 3.4(e)** and **Section 4.4**.

(c) Except as expressly stated in this Agreement, in the event of a default under this Agreement by Developer which is material and that is not timely cured pursuant to **Section 6.1** hereof, the City may terminate this Agreement.

(d) In the event of three (3) or more material defaults by Developer under this Agreement, the City may terminate this Agreement without any further right to cure.

(e) If the City terminates this Agreement as provided herein, the City will notify Developer in writing, at least fourteen (14) days prior to terminating the Agreement. The intent of this provision is to provide notice to Developer, not to provide any additional right to cure.

If TIF Project Plan 4C or this Agreement is terminated or is otherwise invalidated by a court of competent jurisdiction or State action, the City's obligation to make any additional reimbursements of Private TIF Reimbursable Costs shall cease. Upon termination of this Agreement, the City may, but is not obligated, to terminate the TIF District and/or repeal the Project Plan.

ARTICLE 7 – MISCELLANEOUS

Section 7.1 EXCUSED DELAY AND FORCE MAJEURE. The performance of Developer's obligations shall be excused or extended at Developer's option, as a consequence of events caused by force majeure or excusable delay (collectively "**Excused Delay**") applicable to the portion of the Project on account of i) acts of war or terrorism, ii) fire or other similar casualty or unusual and extraordinary occurrence, iii) strikes or lockouts or labor difficulties, iv) explosion, v) riot or civil commotion or acts of public enemy, vi) judicial or administrative writ, order or decree, vii) unusually adverse weather conditions (to the extent the aggregate number of days attributable to delay solely caused by weather exceed the National Weather Service's historical average aggregate number of adverse weather days measured over a comparable period of construction during the five (5) consecutive years prior to commencement of construction) viii) legislative decisions or actions of, or delay by, applicable local, State or federal governments, ix) casualties at the job site resulting in direct physical damage to the Project, and/or x) moratoria on the issuance of applicable permits or other governmental approvals required for the Project.

Section 7.2 Entire Agreement.

(a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and all of which together shall constitute one and the same instrument. Hand signatures transmitted by fax or electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

(b) This Agreement incorporates and supersedes all prior negotiations or previous agreements between the Parties and their predecessors in interest with respect to TIF discussions relating to this Property.

(c) This Agreement may only be modified by written instrument executed by the City and Developer.

(d) This Agreement or a Memorandum thereof, may be filed by either Party with the Johnson County Register of Deeds.

Section 7.3 Headings. The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

Section 7.4 Notices. Written notices, demands and communications between the City and Developer shall be sufficiently given by personal service or dispatched by registered or certified mail, postage prepaid, return receipt requested, or overnight courier, to the persons and addresses stated herein. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate in writing to the City Clerk, with a copy to the City Attorney. Notwithstanding anything to the contrary contained herein, notice personally served shall be deemed to have been received as of the date of such services or the date service is refused if written verification thereof is received from messenger service attempting such delivery.

Notice to Developer should be served to:

87 Renner, LLC
Attn: Doug Price
1000 Broadway Blvd. 4th Floor
Kansas City, MO 64105
(913)-271-6738
doug@39bevco.com

With a copy to:

Charles Renner
Husch Blackwell
4801 Main, Suite 1000
Kansas City, MO 64112
(816) 329-4762
Email: Charles.renner@huschblackwell.com

Notice to the City should be served to:

City Clerk
Lenexa City Hall
17101 W. 87th St. Pkwy
Lenexa, KS 66219
(913) 477-7516
(913) 477-7589 (fax)

With a copy to:

City Attorney

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Lenexa City Hall
17101 W. 87th St. Pkwy
Lenexa, KS 66219
(913) 477-7620
(913) 477-7639 (fax)

Section 7.5 Confidentiality. Nothing in this Agreement grants either Party or any other person or entity any right to use, directly or indirectly, the trade names, trademarks, or other intellectual property of either Party in connection with any product, service, promotion or publication without the prior written approval of the other Party. Nothing herein precludes the City from referencing Developer as a business locating in (or upon occupancy, located in) Lenexa.

Section 7.6 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and Developer or as constituting Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, it being understood that Developer is an independent contractor hereunder. Each Party (the “**Indemnifying Party**”) agrees to indemnify and hold harmless the other Party (the “**Indemnified Party**”) against all claims for workers’ compensation, unemployment tax and withholding tax obligations related to this Project and asserted by anyone working for or employed on behalf of the Indemnifying Party.

Section 7.7 Non-Liability of City Officials and Employees. No member, official, representative, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement.

Section 7.8 Non-Liability of Developer Representatives and Employees. No shareholder, member, partner, officer, manager, director, employee, affiliate or representative of Developer shall be personally liable or obligated to perform the obligations of Developer, pursuant to the provisions of the Agreement or for any default or breach of the Agreement by Developer.

Section 7.9 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

Section 7.10 Incorporation into Agreement. Unless otherwise provided herein, the Recitals and all the exhibits attached hereto are incorporated herein by reference.

Section 7.11 Conflict of Terms. It is the intention of the City and Developer that if any provision of this Agreement is capable of two constructions, one of which would

render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

Section 7.12 No Limitation of Governmental Functions or Police Powers. Nothing in this Agreement shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the State Constitution, statutes or by general law.

Section 7.13 Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

[Signature Pages Follow]

[SEAL]

CITY OF LENEXA, KANSAS

By: _____
Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, Assistant City Attorney

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

On this ____ day of _____, 2020 before me appeared Michael A. Boehm, who acknowledged himself to be Mayor of the City of Lenexa, Kansas, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

87 Renner, LLC,
a Kansas limited liability company

By: _____

Printed Name

Title

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF KANSAS)

On this _____ day of _____, 2020 before me appeared _____, who acknowledged himself to be _____ of 87 Renner, LLC, a Kansas limited liability company, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

Exhibit A
CITY CENTER TIF Project Plan 4C
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF JOHNSON, STATE OF KANSAS, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 12, RANGE 24, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 12 S., RANGE. 24 E., JOHNSON COUNTY, KANSAS; THENCE N. 02° 16' 12" W. ON THE WEST LINE OF SAID SECTION A DISTANCE OF 110.00 FEET; THENCE N. 87° 34' 00" E. A DISTANCE OF 50.00 FEET TO A POINT, THIS SAID POINT BEING ON THE EASTERLY RIGHT-OF-WAY OF RENNER ROAD, THE WESTERLY RIGHT- OF-WAY OF INTERSTATE ROUTE 435 AND THE TRUE POINT OF BEGINNING; THENCE N. 2° 16' 12"

W. ON SAID EASTERLY RIGHT-OF-WAY A DISTANCE OF 654.54 FEET; THENCE N. 87° 34' 00" E. A DISTANCE OF 535.25 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF INTERSTATE ROUTE 435; THENCE S. 8° 55' 33" W. ON SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 616.62 FEET; THENCE S. 66° 31' 45" W. ON SAID WESTERLY RIGHT-OF-WAY 139.28 FEET; THENCE S. 87° 34' 00" W. ON SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 285.67 FEET TO THE TRUE POINT OF BEGINNING, EXCEPT THAT PART USED OR DEDICATED FOR STREETS , ROADS OR HIGHWAYS.

EXHIBIT B
PROJECT PLAN 4C

As adopted by Ordinance No. 5701 by the Lenexa Governing Body on December 18, 2018 and amended by Ordinance No. _____ on _____, 2020.

EXHIBIT C
TIF REIMBURSABLE COSTS – Project Plan 4C

The following items are estimated costs eligible for reimbursement with TIF Revenues generated from the Project Plan 4C Area.

Description of Expenditure		Reimbursement to:	Estimated Reimbursement
Eligible TIF Fees (excluding the Annual Administrative Fee)		Developer	\$50,000 ¹
Private TIF Reimbursable Costs paid by Developer, including:	Estimated Costs	Developer	\$10,133,956²
a. Land Acquisition & associated eligible costs	\$2,500,000		
b. Architectural & Engineering Costs (excluding vertical buildings owned or leased by Developer other than parking structures)	\$700,000		
c. Site Development (grading, stormwater, etc.)	\$1,000,000		
g. Private Streets	\$433,956		
i. Parking	\$5,500,000		
Itemized Public TIF Reimbursable Costs paid by City, including:		City	\$4,000,000
87 th Street SBD Prepayment	\$481,703 ²		
Infrastructure improvements related to the 87th Street Parkway and I-435 interchange improvement project; public parking structures within the District; land acquisition costs within the District; landscaping improvements associated with 87th Street Parkway and I-435 Interchange; 87th Street Parkway traffic signal improvements within the District; and public park improvements within the District	\$3,518,297		
Annual Administrative TIF Fee: 0.5% of the annual TIF Revenues reimbursed to Developer similar to Private TIF Reimbursable Costs	TBD		
Maximum Aggregate Public TIF Reimbursable Costs		Developer	\$10,183,956
Maximum Aggregate Public TIF Reimbursable Costs		City	\$4,000,000³
MAXIMUM AGGREGATE TIF REIMBURSABLE COSTS (excluding the City Annual Administrative fee which is TBD)			\$14,183,956

- ¹ The TIF Fee is based upon 1% of the Private TIF reimbursable Costs in the estimated amount of \$10,183,956 (which amount represents the Total Private TIF Reimbursable Costs less the TIF Fee). This total excludes the Annual Administrative TIF Fee as it is TBD based upon eligible TIF Revenue disbursed. This sum shall be reimbursed to Developer if it has been paid by Developer and if not, it shall be deducted from the first Private TIF Reimbursable Cost payment (and thereafter until paid in full) and paid to the City.
- ² The 87th Street SBD Prepayment is based upon special assessments associated the 87th Street Special Benefit District which the City prepaid for the Property pursuant to a Participation Agreement between Renner Development Company, LLC and the City dated November 20, 2007. This sum shall be reimbursed to the City prior to any reimbursement for Private TIF Reimbursable Costs. The amount is based on the City's prepayment of \$346,785 plus annual interest rate of 3%.
- ³ The amount of the total Public TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.

Notwithstanding any other provision of this Plan to the contrary, reimbursable expenditures shall at all times be consistent with the Act, including judicial interpretation of the Act.

EXHIBIT D
FINAL SITE PLAN & RENDERING
PL18-19P – Approved October 16, 2018





EXHIBIT E
City Center TIF District Project Plan 4C
REQUEST FOR CERTIFICATE OF COMPLETION & AFFIDAVIT OF DEVELOPER

Renner Housing, LLC, ("Developer") has constructed certain improvements that are the subject of the City Center TIF District Project Plan 4C (the "Project"). Implementation of the Project Plan 4C, including the procedures for reimbursement of eligible TIF expenses is set forth in a DDA between Developer and the City of Lenexa, Kansas ("City"). Unless otherwise defined herein, all terms shall have the definitions set forth in the DDA.

I, _____, being duly sworn, do state under oath for this affidavit the following:

1. I am over the age of 18 and am competent to attest to the facts herein. I have personal knowledge of the facts recited in this Affidavit and I am authorized by Developer to make these representations.

2. Developer has in all material respects completed the Project or a definable portion of the Project and requests a Certificate of Completion from the City. The Project or a definable portion thereof for which a Certificate of Completion is requested is generally described as: _____

_____ (the "Completed Work").

3. The cost of the Completed Work that constitutes Private TIF Reimbursable Costs is \$_____ and these costs have not previously been submitted for CID, TIF or other City reimbursement.

4. Construction of the Completed Work was, to the best of my actual knowledge, in accordance with all applicable federal, state and local laws and regulations.

5. The costs incurred for the Completed Work were in furtherance of the Project and in all materials respects complete a definable portion of the Project.

6. To the best of my actual knowledge, Developer has no outstanding or anticipated liens on the Completed Work.

7. To the best of my actual knowledge, Developer is not in default under the DDA and has provided all subordination documents, if any, required by **Section 1.2** of the DDA.

FURTHER AFFIANT SAITH NOT.

Printed Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this ____ day of _____, 20____.

Notary Public

My appointment expires:

EXHIBIT F
CERTIFICATION OF EXPENDITURES FORM

Request No. _____

Date Submitted: _____

Pursuant to **Section 5.2(d)** of the DDA for the City Center TIF District pertaining to Project Plan 4C (the "DDA") between the City of Lenexa, Kansas and the undersigned (the "Developer"), the Developer, by its undersigned representative, requests payment or reimbursement and hereby states and certifies as follows:

1. Developer has received a Certificate of Completion for the Project or definable portion thereof for which the costs submitted were incurred.
2. All terms in this request shall have and are used with the meanings specified in the DDA.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, and 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 1** hereto.
4. These costs have been incurred and are presently due and payable and are payable or reimbursable under the DDA.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other request previously filed with the City.
6. To the best of Developer's knowledge, 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 has been performed in all material respects in accordance with the plans and specifications therefor.
8. Lien waivers for costs for which payment is hereby requested have been received and are maintained at Developer's principal office and will be provided upon request of the City.

[Signature Page Follows]

87 Renner, LLC, a Kansas limited liability company

By: _____

Printed Name

Title: _____

**ATTACHMENT 1
TO CERTIFICATION OF EXPENDITURE**

**DISPOSITION AND DEVELOPMENT AGREEMENT FOR
THE CITY CENTER TIF DISTRICT - PROJECT PLAN 4C**

REQUEST NO. _____

DATED _____

Itemization of Costs

Payee	Amount	Description of Cost – Line Item of Private Reimbursable Cost
-------	--------	---

FOR CITY USE ONLY

_____ APPROVED this _____ day of _____, 20____.

_____ DENIED this _____ day of _____, 20____.

By: _____

Title: _____

If Denied, basis for Denial:

EXHIBIT G
SUBMITTAL REQUIREMENTS FOR REIMBURSEMENT OF TIF INVOICES

The DDA sets forth the procedures for reimbursement of Private TIF Reimbursable Costs, but when submitting for reimbursement, Developer shall apply the following requirements with respect to its documentation:

1. Complete request for Certificate of Completion, including affidavit included therein.
2. Evidence that the expense was an eligible Private TIF Reimbursable Cost in the DDA.
3. Indication of the time frame the expense was made.
4. Identification of the improvement for which reimbursement is sought and description of the purpose for which the cost was incurred.
5. Submission of invoices, or other evidence approved by the City which confirms the applicable Private TIF Reimbursable Cost was paid or incurred, shall accompany the Certificate of Completion; and Certificate of Expenditures by Developer certifying that all expenses submitted are Private TIF Reimbursable Costs and have not been previously submitted or paid by TIF Revenues or other City sources.
6. Lien Waivers. These may only be waived by the City, and will generally only be done if the invoice reflects payment has been made.
7. Any other information requested by the City.
 - a. All invoices/receipts must be submitted/billed to the Developer. If the invoice was billed to a contractor/subcontractor, the cost(s) must be reflected in a subsequent invoice to the Developer.
 - b. Individual receipts must total an aggregate of at least \$1,000.00 for submittal. After the project is complete, if increment is available submission of receipts for lesser amounts in the aggregate will be accepted and processed.
 - c. All expenses must be documented by itemized invoices or other City approved evidence that the applicable Private TIF Reimbursable Cost was paid or incurred. Handwritten notes or receipts with handwritten notes will not be accepted. If available, supporting receipts should be attached to any invoice submitted. In the case of services, the invoice should include itemization of the time spent on the project; description of the service performed; location where the service was performed; the name of the person and/or company performing the service; and information regarding the cost of the service (i.e. rate of pay and number of hours performed, or if a lump sum, the number of hours performed or type of work performed may be necessary to determine if the cost was reasonable and customary).

Submission of above information directly to City Finance Department in the timeframe set forth in the DDA.