
**NINTH & NEW HAMPSHIRE TAX INCREMENT FINANCING DISTRICT
REDEVELOPMENT AGREEMENT
FOR THE
SOUTH PROJECT AREA**

by and between the

CITY OF LAWRENCE, KANSAS

and

900 NEW HAMPSHIRE, LLC

DATED AS OF NOVEMBER 30, 2012

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**NINTH & NEW HAMPSHIRE TAX INCREMENT FINANCING DISTRICT
REDEVELOPMENT AGREEMENT FOR THE SOUTH PROJECT AREA**

THIS AGREEMENT is entered into by and between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas as a city of the first class (the “**City**”), and **900 NEW HAMPSHIRE, LLC**, a limited liability company organized and existing under the laws of the State of Kansas (the “**Developer**,” and together with the City, the “**Parties**”), and is dated as of November 30, 2012.

RECITALS

WHEREAS, on August 7, 2012, the City created the Ninth & New Hampshire Tax Increment Financing Redevelopment District (the “**Redevelopment District**”) pursuant to K.S.A. 12-1770 *et seq.* (the “**Act**”) and Ordinance No. 8768 of the City (the “**Redevelopment District Ordinance**”); and

WHEREAS, the Redevelopment District consists of approximately 6.06 acres generally located from 10th Street on the South, on the west by New Hampshire Street, on the east by the alleyway that runs between the block between New Hampshire Street and Rhode Island Street, and on the north by the boundary between the city-owned parking lot located mid-block between New Hampshire Street and Rhode Island Street, in the City of Lawrence, Douglas County, Kansas, and is legally described on **Exhibit A** attached hereto; and

WHEREAS, pursuant to the Redevelopment District Ordinance, the Redevelopment District consists of two redevelopment project areas, a North Project Area and a South Project Area as legally described on **Exhibit A** attached hereto.;

WHEREAS, the Redevelopment District Ordinance described the district plan for each of the project areas as follows:

North Project Area:

Planned mixed-use apartment and banking center with between 90 to 120 apartment units and bank and apartment amenity space located on the first floor with an underground parking facility, and related public and private infrastructure.

South Project Area:

Planned mixed-use 81 unit hotel with retail space and hotel lobby on the first floor, underground parking and related public and private infrastructure.

This area will also include a proposed project related to the Lawrence Arts Center, an Arts Commons space. This Arts Commons is intended to serve as a public arts space, managed and curated by the Arts Center, featuring a park-like setting and perhaps a built structure. This space would be located on the Salvation Army tract located directly south of the Arts Center. The space could be a venue for public art exhibitions, theatrical productions, music, film and art-making activities. The green space would also provide space for children attending the arts-based preschool and other educational programs the opportunity to work and play outside. The building, paid for and constructed by the Arts Center through a future capital campaign could help define the public green space and add classroom, preschool, studio and exhibition space. The project includes funding for site acquisition and preparation.

WHEREAS, the Developer submitted to the City the South Project Area Redevelopment Project Plan for the Ninth & New Hampshire Tax Increment Financing District, dated August 13, 2012 (the “**South Project Plan**”), which was approved by the City on October 9, 2012, pursuant to Ordinance No. 8791; and

WHEREAS, the City and the Developer desire to enter into this Agreement to address issues related to development of the Redevelopment District and implementation of the South Project Plan; and

WHEREAS, if in the future the City approves a project plan for the North Project Area, a separate redevelopment agreement shall be required by the City.

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

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

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

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.
- G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the South Project Plan, and such resolutions and ordinances of the City introduced or adopted by the City Commission which designate the Redevelopment District and the South Project Area and adopt the South Project Plan, and the provisions

of the Act, as amended, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“Act” means the Kansas Tax Increment Financing District Act, K.S.A. 12-1770 et seq., as amended and supplemented from time to time.

“Actual Rate of Borrowed Funds” means the interest rate being paid by the Developer on its industrial revenue bond obligation for the Hotel Project, or if refinanced or financed by other means, its first mortgage loan obligation for the Hotel Project. The Actual Rate of Borrowed Funds shall be submitted by the Developer to the City in the form of an affidavit from the Developer.

“Agreement” means this Ninth & New Hampshire Tax Increment Financing District Development Agreement for the South Project Area, as amended from time to time.

“Applicable Law and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

“Certificate of Redevelopment Project Costs” means a certificate relating to Redevelopment Project Costs in substantially the form attached hereto as **Exhibit B-1**.

“Certificate of TDD Costs” means a certificate relating to TDD Costs in substantially the form attached hereto as **Exhibit B-2**.

“Certificate of Substantial Completion” means a certificate evidencing Substantial Completion of the Hotel Project, in substantially the form attached hereto as **Exhibit C**.

“City” means the City of Lawrence, Kansas.

“City Event of Default” means any event or occurrence defined in **Section 9.02** of this Agreement.

“City Project” means the acquisition of property for the Art Commons site, which the City has not, as of the date of the agreement, decided to acquire, and related infrastructure and other related Redevelopment Project Costs within the South Project Area.

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

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“County” means Douglas County, Kansas.

“Developer” means 900 New Hampshire, LLC, a limited liability company organized and existing under the laws of the State of Kansas, and any successors and assigns approved pursuant to this Agreement.

“Developer Event of Default” means any event or occurrence defined in Section 9.01 of this Agreement.

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

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

“Excusable Delays” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, strike, shortage of materials, unavailability of labor, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Hotel Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

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

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

“Incremental Tax Revenues” means the Real Property Tax Revenues and the Sales Tax Revenues.

“Hotel Project” means a multi-use structure consisting of approximately 92 hotel rooms, 3 condominium units and associated mixed use commercial space to be located on the Hotel Project Site.

“Hotel Project Site” means the approximately 0.67 acre site located at the Southeast corner of 9th and New Hampshire within the South Project Area upon which the Hotel Project will be constructed.

“North Project” means a planned mixed-use apartment and banking center with between 90 to 120 apartment units and bank and apartment amenity space located on the first floor with an underground parking facility, and related public and private infrastructure to be constructed in the North Project Area.

“North Project Area” means the North Project Area within the Redevelopment District, approved by the Redevelopment District Ordinance, the boundaries of which are legally described in Exhibit A hereto.

“North Project Plan” means the redevelopment plan to be approved by the City in the future for the North Project Area.

“Pay As You Go” has the meaning set forth in Section 3.02.

“Permitted Subsequent Approvals” means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

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

“Public Improvements” means the public improvements described in the South Project Plan (excluding the Arts Commons or any public improvements solely related thereto) to be constructed and paid for by the Developer and in compliance with the provisions of Section 4.05(B)(2).

“Real Property Tax Revenues” means the incremental increase in real property taxes within the South Project Area, determined in accordance with the Act and the South Project Plan. All incremental increases in real property taxes assessed on the portions of the South Project Area other than the Hotel Project Site, to the extent such increases are caused by the Hotel Project or other activities that do not constitute a new project shall be considered Real Property Tax Revenues. Any increases in real property taxes caused by a new project in the South Project Area will not be included in the TIF fund without the City’s approval.

“Redevelopment District” means the term as defined in the preamble to this Agreement.

“Redevelopment District Ordinance” means the term as defined in the preamble to this Agreement.

“Redevelopment Project Costs” means “redevelopment project costs” as defined in the Act and as set forth in the South Project Plan and this Agreement, including interest, but not interest on interest.

“Sales Tax Revenues” means (a) 100% of the incremental increase in revenue received by the City from any local sales and use taxes in effect on the date hereof collected within the South Project Area, and (b) 100% of the incremental increase in revenue received by the County from any local sales and use taxes in effect on the date hereof collected within the South Project Area; all determined in accordance with the Act and the South Project Plan.

“Site Plan” means the Final Development Plan for the South Project Area submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City code provisions, which may be approved as a whole or approved in phases or stages.

“South Project Area” means the South Project Area within the Redevelopment District, approved by the Redevelopment District Ordinance, the boundaries of which are legally described in Exhibit A hereto.

“South Project Plan” means the term as defined in the preamble to this Agreement.

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

“**Tax Increment Fund**” means the Ninth & New Hampshire Tax Increment Fund, created pursuant to the Act and Section 6.01 hereof.

“**TDD**” means the transportation development district to be created by the City within the portion of the Redevelopment District containing the Hotel Project.

“**TDD Act**” means the transportation development district act contained in K.S.A. 12-17,140 *et seq.*

“**TDD Costs**” means those costs of the “project” as defined in the TDD Act that are approved by the City and are to be paid from the TDD Sales Tax, but not interest on interest.

“**TDD Sales Tax**” means the 1% transportation development district sales tax to be imposed within the TDD pursuant to the TDD Act.

“**TDD Sales Tax Fund**” means the Ninth & New Hampshire TDD Sales Tax Fund, created pursuant to the TDD Act and Section 6.02 hereof.

“**WSJ Prime Rate**” means the interest rate published in *The Wall Street Journal* as the prime interest rate for U.S. commercial banks, as adjusted semi-annually on each January 1 and July 1 as such prime interest rate is adjusted.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

C. No Litigation. To the best of the City’s knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the South Project Plan or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or

adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

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

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

Section 2.02. Representations of the Developer.

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

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

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

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

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

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

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

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

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

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

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

K. Hotel Project. The Developer represents and warrants that the South Project Area is sufficient to construct the Hotel Project as contemplated in the South Project Plan and this Agreement.

Section 2.03. Developer's Acquisition of the Hotel Project Site. At the time that this Agreement is executed, Developer represents that it has acquired, or has the legal right to acquire, legal title to the Hotel Project Site. All of the real property acquired by the Developer, subject to the rights of assignment under Article VII and further subject to Section 5.07, shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained in this Agreement and in the South Project Plan immediately upon acquisition and prior to any encumbrances placed thereon.

Section 2.04. Conditions to the Effective Date of this Agreement. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, the Developer shall submit the following documents to the City:

- A. A copy of the Developer's Articles of Organization, certified by the Secretary of State of the State of Kansas; and
- B. A certified copy of the Operating Agreement of the Developer; and
- C. A legal opinion from counsel to the Developer in form and substance acceptable to the City covering: (i) the due organization of the Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against the Developer; and
- D. A title insurance commitment or policy in a form acceptable to the City regarding the Developer's fee simple ownership of the Hotel Project Site, subject only to standard title exceptions, those exceptions to which the Developer did not object in connection with the purchase of the Hotel Project Site, and mortgages permitted by Section 5.07.

ARTICLE III

REIMBURSEMENT OF REDEVELOPMENT PROJECT COSTS AND TDD COSTS

Section 3.01. Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs and TDD Costs as necessary to complete the Project, all subject to the Developer's right to terminate this Agreement as set forth in Section 9.04.

Section 3.02. City's Obligation to Reimburse Developer.

A. Obligation to Reimburse from Tax Increment Fund. Subject to the terms of this Agreement and the conditions in this Section, the City agrees, solely and exclusively from 95% of the Incremental Tax Revenues, to reimburse Developer for Redevelopment Project Costs in a total amount not to exceed \$3,500,000 plus interest at the Actual Interest Rate for Borrowed Funds but no more than the WSJ Prime Rate plus 3% as published at the time of this Agreement or the time permanent financing is in place as long as that is within two years of the signing of this Agreement. The City shall retain 5% of the Incremental Tax Revenues to pay for the City Project, except that if the City Project does not commence within sixty (60) months of the date of the filing of the Certificate of Substantial Completion by the Developer with the City in accordance with Section 4.07, such 5% of Incremental Tax Revenues shall be used to reimburse the Developer's Redevelopment Project Costs in accordance with Section 6.01. Developer shall be reimbursed for Redevelopment Project Costs from the Tax Increment Fund by the City as funds are collected in the Tax Increment Fund (the "Pay As You Go" method). The Parties agree that such reimbursement shall be made only on a Pay As You Go basis solely from Incremental Tax Revenues. The City shall have no obligation to reimburse Developer until funds are available in the Tax Increment Fund. Nothing in this Agreement shall obligate the City to reimburse Developer for any cost that is not a "Redevelopment Project Cost" as defined by the Act, except as otherwise expressly provided in this Agreement.

B. Obligation to Reimburse from TDD Sales Fund. Subject to the terms of this Agreement and the conditions in this Section, the City agrees, solely and exclusively from the TDD Sales Tax, to reimburse Developer for TDD Costs in a total amount not to exceed \$3,000,000 plus interest at the Actual Rate of Borrowed Funds but no more than the WSJ Prime Rate plus 3% as published at the time of this Agreement or the time permanent financing is in place as long as that is within two years of the signing of this Agreement. The City shall retain the first \$850,000 of TDD Sales Tax as provided in Section 6.02. Developer shall be reimbursed for TDD Costs from the TDD Sales Fund by the City as funds are collected in the TDD Sales Tax

Fund (the “Pay As You Go” method). The Parties agree that such reimbursement shall be made only on a Pay As You Go basis solely from TDD Sales Tax. The City shall have no obligation to reimburse Developer until funds are available in the TDD Sales Tax Fund. Nothing in this Agreement shall obligate the City to reimburse Developer for any cost that is not a “Project” as defined by the TDD Act, except as otherwise expressly provided in this Agreement.

C. Source of Reimbursement. The City shall make payments for reimbursement of Redevelopment Project Costs from the Tax Increment Fund on a Pay As You Go basis in the order of priority set forth in Section 6.01. The City shall make payments for reimbursement of TDD Costs from the TDD Sales Tax Fund on a Pay As You Go basis in the order of priority set forth in Section 6.02. Developer and the City acknowledge and agree that Developer’s expenses may be certified for reimbursement both as a Redevelopment Project Cost and as a TDD Cost, to the extent such expenses are eligible for reimbursement under both Funds pursuant to this Agreement and Kansas law. Any such expenses certified as both a Redevelopment Project Cost and a TDD Cost shall be the last expenses reimbursed by both Funds. To the extent Developer certifies Redevelopment Project Costs in excess of \$3,500,000, such excess (the “**TIF Excess**”) shall be attributed to those Redevelopment Project Costs that are also certified as TDD Costs (regardless of when certified). Until the Tax Increment Fund has reimbursed Developer for all Redevelopment Project Costs not also certified as TDD Costs, plus interest, all reimbursements from the Tax Increment Fund shall first be applied to accrued but unpaid interest in such Fund, and then to a reduction in the principal balance of Redevelopment Project Costs not also certified as TDD Costs, all as set forth in Section 6.01. No disbursement from the Tax Increment Fund shall offset or affect the outstanding reimbursable balance of TDD Costs unless and until the Tax Increment Fund reimburses Developer for Redevelopment Project Costs that are also certified as TDD Costs, plus interest. In no event, however, shall the principal balance of TDD Sales Tax Fund be reduced below the TIF Excess, plus TDD Costs not also certified as Redevelopment Project Costs, plus interest, except as a result of disbursements to Developer from the TDD Sales Tax Fund.

D. Interest. For purposes of reimbursement of interest under this Agreement, interest shall be calculated on the basis of a 360-day year of twelve 30-day months and shall accrue from the date of the advance by Developer’s lender. All requests for reimbursement of interest shall be on the applicable form attached hereto as Exhibit B-1 or Exhibit B-2 and accompanied by both the documentation showing the calculation of the interest and such other supporting documentation as the City may reasonably request.

Section 3.03. Developer Reimbursement Process.

Redevelopment Project Costs:

A. All requests for reimbursement of Redevelopment Project Costs shall be made in a Certificate of Redevelopment Project Costs in substantial compliance with the form attached hereto as Exhibit B-1. The Developer shall provide itemized invoices, receipts or other information, if any, to confirm that any such cost is so incurred and does so qualify as a Redevelopment Project Cost and only reflects such redevelopment project costs included in or contemplated by Exhibit G of the South Project Plan. To the extent any invoice, receipt or other information includes expenses that are partially eligible for reimbursement as a Redevelopment Project Cost and partially ineligible, Developer’s reimbursement request shall specify that portion of such expense that Developer certifies is a Redevelopment Project Cost and the basis for such allocation. The Developer shall provide such additional information as requested by the City to confirm that such costs have been incurred and qualify as Redevelopment Project Costs.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Redevelopment Project Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of Redevelopment Project Costs to review and respond by written notice to the Developer. If the submitted Certificate of Redevelopment Project Costs and supporting documentation demonstrates that (1) the request relates to the Redevelopment Project Costs; (2) the expense was incurred; (3) Developer is not in material default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certificate of Redevelopment Project Costs and make, or cause to be made, reimbursement from the Tax Increment Fund in accordance with Section 3.05 and Article VI hereof, within thirty (30) days of the City's approval of the Certificate of Redevelopment Project Costs. If the City reasonably disapproves of the Certificate of Redevelopment Project Costs, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period. Approval of the Certificate of Redevelopment Project Costs will not be unreasonably withheld.

D. If the Developer submits a Certificate of Redevelopment Project Costs for an amount greater than the current balance in the Tax Increment Fund, any unpaid Redevelopment Project Costs described in such Certificate shall remain approved by the City and shall be paid within thirty (30) calendar days of the date additional funds are deposited in the Tax Increment Fund, to the extent of such funds, until the Developer is fully reimbursed for the Redevelopment Project Costs described in such Certificate.

E. Nothing in this Agreement shall prohibit the Developer from submitting Certificates of Redevelopment Project Costs covering the Developer's interest expenses on any Redevelopment Project Costs not previously reimbursed.

TDD Costs:

A. All requests for reimbursement of TDD Costs shall be made in a Certificate of TDD Costs in substantial compliance with the form attached hereto as Exhibit B-2. The Developer shall provide itemized invoices, receipts or other information, if any, to confirm that any such cost is so incurred and does so qualify as a TDD Cost. To the extent any invoice, receipt or other information includes expenses that are partially eligible for reimbursement as a TDD Cost and partially ineligible, Developer's reimbursement request shall specify that portion of such expense that Developer certifies is a TDD Cost and the basis for such allocation. The Developer shall provide such additional information as requested by the City to confirm that the such costs have been incurred and qualify as TDD Costs.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of TDD Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of TDD Costs to review and respond by written notice to the Developer. If the submitted Certificate of TDD Costs and supporting documentation demonstrates that (1) the request relates to the TDD Costs; (2) the expense was incurred; (3) Developer is not in material default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certificate of TDD Costs and make, or cause to be made, reimbursement from the Sales Tax Fund in accordance with Section 3.05 and Article VI hereof, within thirty

(30) days of the City's approval of the Certificate of TDD Costs. If the City reasonably disapproves of the Certificate TDD Costs, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period. Approval of the Certificate of TDD Costs will not be unreasonably withheld.

D. If the Developer submits a Certificate of TDD Costs for an amount greater than the current balance in the TDD Sales Tax, any unpaid TDD Costs described in such Certificate shall remain approved by the City and shall be paid within thirty (30) calendar days of the date additional funds are deposited in the TDD Sales Tax Fund, to the extent of such funds, until the Developer is fully reimbursed for the TDD Costs described in such Certificate.

E. Nothing in this Agreement shall prohibit the Developer from submitting Certificates of TDD Costs covering the Developer's interest expenses on any TDD Costs not previously reimbursed.

Section 3.04. Right to Inspect and Audit. The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the Redevelopment Project Costs and TDD Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices).

Section 3.05. Limitation on City's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse Developer for Redevelopment Project Costs shall be limited to monies in the Tax Increment Fund and the City's obligation to reimburse Developer for TDD Costs shall be limited to monies in the TDD Sales Tax Fund, and shall not be payable from any other source unless such cost is validly certified for reimbursement under both Funds, in which case reimbursements shall be made in accordance with Section 3.02.C, above.

ARTICLE IV

THE REDEVELOPMENT PROJECT

Section 4.01. Scope of the Hotel Project. Subject to the terms and conditions of the South Project Plan and this Agreement, the Developer shall construct, or cause to be constructed, the Hotel Project.

Section 4.02. Project Schedule.

A. Within six (6) months from the date of this Agreement, the Developer shall commence and shall promptly thereafter diligently prosecute to completion the construction of the Hotel Project. The completion of the Hotel Project shall be evidenced by the City delivery of a Certificate of Substantial Completion in accordance with Section 4.07 of this Agreement.

B. The Developer shall complete each of its obligations under this Agreement with respect to the acquisition, construction and completion of the Hotel Project within thirty-six (36) months of the date of this Agreement. The completion of the Hotel Project shall be evidenced by the City's delivery of a Certificate of Substantial Completion regarding the Hotel Project in accordance with Section 4.07 of this Agreement. Except in the event of any Excusable Delays, the Developer's failure to obtain a Certificate of Substantial Completion regarding the Hotel Project within thirty-six (36) months from the date of this Agreement shall constitute an Event of Default for purposes of Section 9.01.

C. Subject to approval by the City of the North Project Plan, the Developer shall use best efforts to commence construction of the North Project within thirty-six (36) months of the date of this Agreement and shall promptly thereafter diligently prosecute to completion the construction of the North Project.

Section 4.03. Project Budget. The Hotel Project shall be constructed substantially in accordance with the Hotel Project Budget attached as Exhibit D hereto. Notwithstanding the previous sentence, deviations to the Hotel Project Budget by less than 10% caused or necessitated by unforeseen price fluctuations, the scarcity of any construction material, or the existence of any shortage of labor services are expressly acknowledged. Any deviations of any line item in the Hotel Project Budget by more than 10% shall require the Developer to give the City prior written notice of such changes to the Hotel Project Budget.

Section 4.04. Design of Project.

A. In order to further the development of the Redevelopment District, the City hereby authorizes the Developer to construct, or cause to be constructed, the Hotel Project according to the final plans approved in writing by the City during the normal course of obtaining the Permitted Subsequent Approvals.

B. Developer shall comply or cause compliance with the design standards and requirements attached hereto as Exhibit E in the construction of the Project.

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

A. Site Plan. The Developer shall prepare and submit a Site Plan for the South Project Area to the City for review and approval pursuant to the City Code. The Site Plan shall be in conformance with the South Project Plan and this Agreement.

B. Public Improvements. The Developer and the City agree that the public improvements shall be constructed in accordance with the following requirements:

1. Developer shall submit the plans and specifications for the public improvements and traffic control plan to City Engineer for written approval.
2. Once the plans and specifications for the public improvements and traffic control plan are approved by City Engineer, then the Developer shall submit to the City the proposed construction agreement(s) with any contractor who will perform any part of the public improvements for approval by the City.
3. Prior to commencing construction of the public improvements portion of the Project, the Developer shall submit to the City a construction schedule for the public improvements for approval by the City.
4. Once the Developer has obtained all necessary approvals, the Developer shall submit to the City written verification from Developer's lender in a form satisfactory to the City to demonstrate that the Developer has sufficient funds to complete the construction of the public improvements in a timely fashion and in accordance with the plans and specifications approved by the City.

5. The City will conduct its normal inspections of the construction of the public improvements and charge its normal inspection fees.
6. Developer will cause to be provided to the City all necessary bonds in connection with the construction of the public improvements.
7. Upon receipt of all approvals and deposit of financial assurances to the City, the City will then issue a notice to proceed with the public improvements.

C. Zoning, Planning and Platting. The City agrees to consider and act on any zoning, planning and platting applications by the Developer in due course and good faith.

D. Construction Plans. After approval of the Site Plan, the Developer shall submit Construction Plans for the Hotel Project for review and approval pursuant to City Code. Construction Plans may be submitted in phases or stages. The Construction Plans shall be in sufficient completeness and detail to show that construction will be in conformance with the South Project Plan and this Agreement. The Developer agrees that all construction, improvement, equipping, and installation work on the Hotel Project shall be done in accordance with the Site Plan, Construction Plans and related documents to be approved by the City in compliance with City Code.

E. Construction Permits and Approvals. Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law.

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

G. Continuation and Completion. Subject to Excusable Delays, once the Developer has commenced construction of the Project, or a particular phase of the Hotel Project as approved by the City, the Developer shall not permit cessation of work on the Hotel Project such phase of the Hotel Project for a period in excess of 45 consecutive days or 90 days in the aggregate without prior written consent of the City.

H. Periodic Review. Upon the City's request, the City and the City's Engineer shall have the right to review in a project team meeting the design and construction of the Hotel Project to determine that they are being performed and completed in accordance with this Agreement, the South Project Plan and all Applicable Law and Requirements. If the Hotel Project is not being designed or constructed in accordance with the approved Site Plan, the South Project Plan, or this Agreement, after consulting with the Developer, the City's Engineer shall promptly deliver written notice to the Developer and the Developer shall promptly correct such deficiencies.

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

Section 4.06. Rights of Access. Representatives of the City shall have the right of access to the Redevelopment District, without charges or fees, upon at least 24 hours prior written notice, at normal construction hours during the period of construction, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager and Developer's Representative. Such representatives of the City shall carry prior identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity. The Developer may require such representatives to sign a waiver of liability prior to being permitted on-site. Notwithstanding any provision is this Agreement to the contrary, the City and its officers, employees and agents shall retain all rights of access to the Hotel Project pursuant to State law and the City Code.

Section 4.07. Certificate of Substantial Completion. Promptly after Substantial Completion of the Hotel Project in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City. Substantial Completion shall mean that the Developer has completed: (i) all Public Improvements, (ii) at least ninety-five percent (95%) of that portion of the Hotel Project relating to the Hotel and parking structure, and (iii) the cold shell for all condominium units and all other commercial space that constitutes part of the Project. The Certificate of Substantial Completion shall be in substantially the form attached as Exhibit C. The City shall, within a reasonable period of time following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City's execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the applicable phase of the Hotel Project to which the Certificate of Substantial Completion relates.

Section 4.08. Certificate of Minimum Investment. No later than thirty (30) days after delivery of the Certificate of Substantial Completion required by Section 4.07, the Developer shall deliver to the City a Certificate of Minimum Investment in substantially the form attached as Exhibit G.

ARTICLE V

USE OF THE REDEVELOPMENT DISTRICT

Section 5.01. Tenants and Land Use Restrictions. At all times while this Agreement is in effect:

A. Conformance with Project Plan. The Project Area shall be developed, and the Hotel Project constructed, in accordance with this Agreement and the South Project Plan submitted by the Developer and approved by the City. No "substantial changes," as defined by K.S.A. 12-1770a(t), shall be made to the

Hotel Project except as may be mutually agreed upon, in writing, between the Developer and the City and as provided in the Act.

B. Land Use Restrictions. Land uses shall be limited to the Hotel Project (mix of hotel, apartments, and commercial space). The commercial space of the project shall be governed by the Downtown Commercial (CD) zoning district.

Section 5.02. Covenants, Conditions and Restrictions. As a condition of the City issuing a temporary or permanent certificate of occupancy for the Hotel Project, the Developer shall (i) prepare and submit to the City Covenants, Conditions and Restrictions (“CC&Rs”) and (ii) the Developer shall have completed the construction of the Public Improvements and the City shall have accepted the Public Improvements. The CC&Rs shall contain the provisions set forth on Exhibit F. The CC&Rs shall be a permanent encumbrance covering the entirety of the Redevelopment District. The form and substance of the CC&Rs shall be acceptable to the City and the CC&Rs shall not be recorded until the City has approved the final CC&Rs in writing. The Developer will then file the CC&Rs for record in the office of the Douglas County Register of Deeds after written approval by the City.

Section 5.03. Operation of Project. The Project shall comply with all applicable building and zoning, health, environmental and safety resolutions and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

Section 5.04. Copies of All Leases and Agreements. The City and its duly authorized agents shall have the right at reasonable times (during business hours), and upon reasonable notice to inspect copies of all leases, sale contracts and other material agreements between the Developer and any third party relating to the Hotel Project at the principal business office of the Developer, in a manner that maintains the confidentiality of such leases and agreements.

Section 5.05. Sales Tax Information.

A. The Developer agrees to provide the City Manager written notice of all current tenants of the Hotel Project on November 1 of each year and at all other times upon the written request of the City Manager. To the extent the City is a tenant of the Hotel Project by virtue of the Developer’s use of Industrial Revenue Bond financing, the existence of such leases by and between the City and the Developer are hereby acknowledged, without need for additional annual notice.

B. The Developer agrees to cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the South Project Area to be obligated by written contract (lease agreement or other enforceable document) to provide to the City Manager, upon the request of the City Manager, simultaneously with submission to the Kansas Department of Revenue. This obligation shall be a covenant running with the land and shall be enforceable against all retail businesses operating in the South Project Area and shall only terminate upon the passage by the City of an ordinance terminating the South Project Plan. The Developer hereby agrees that each such lease agreement shall provide that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such tenant or purchaser.

C. To the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3657. In furtherance of maintaining the confidentiality of the information provided in this **Section 5.05**, the City shall take all reasonable steps necessary to ensure that such information is kept confidential.

D. Developer agrees to use its best efforts to obtain waivers consenting to the release by the City of aggregate Sales Tax Revenues generated within the Redevelopment District from all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the Redevelopment District.

Section 5.06. Taxes, Assessments, Encumbrances and Liens.

A. The Developer shall pay when due all real estate taxes and assessments on the Redevelopment District. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer and any other owners of real property in the Redevelopment District shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such other owners' property within the Redevelopment District.

B. Subject to **Section 5.07**, Developer agrees that no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Hotel Project as a result of acts of the Developer, its agents or independent contractors.

Section 5.07. Financing During Construction; Rights of Holders.

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

B. Holder Not Obligated to Construct Improvements. The holder of any mortgage authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Hotel Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the deed for the Redevelopment District be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Redevelopment District to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

C. Notice of Default to Mortgage Holders; Right to Cure. With respect to any mortgage granted by Developer as provided herein, whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the

Project, the City shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, but only if City has been requested to do so in writing by Developer. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Hotel Project (beyond the extent necessary to conserve or protect the Hotel Projector construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to and with the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, that portion of the Hotel Project to which the lien or title of such holder relate, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

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

Section 5.08. Covenant for Non-Discrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, disability, national origin, sexual orientation, gender identity, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Redevelopment District, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Redevelopment District.

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

Section 5.09 TDD Signage. The Developer shall require all businesses within the TDD to have a sign prominently displayed at each public entrance for the duration of time the TDD Sales Tax is collected. The sign shall be a minimum size of 8.5 inches by 11 inches with a font size of at least 30. The sign shall at a minimum contain the following:

“This project made possible by Transportation Development District Financing.
Additional Transportation Development District sales tax of 1% collected here.”

ARTICLE VI

TAX INCREMENT FUND AND TDD SALES TAX FUND

Section 6.01. Tax Increment Fund.

A. Creation of Fund; Deposit of Incremental Tax Revenues. The City shall establish and maintain a separate fund and account known as the Ninth & New Hampshire Tax Increment Fund (the "Tax Increment Fund"). All Incremental Tax Revenues shall be deposited into the Tax Increment Fund.

B. Disbursements from Fund. All disbursements from the Tax Increment Fund shall be made only to pay Redevelopment Project Costs. The City shall have sole control of the disbursements from the Tax Increment Fund. Such disbursements shall be made in the following manner:

1. 5% of Incremental Tax Revenues to the City for the City Project, subject to Section 3.02(A); and
2. 95% of Incremental Tax Revenues to the Developer for the Project.

All disbursements from the Tax Increment Fund to reimburse Redevelopment Project Costs shall first be applied against accrued but unpaid interest on Redevelopment Project Costs, at the Actual Rate for Borrowed Funds without reducing the maximum reimbursable amount described in Section 3.02, and then to the reimbursement of the principal amount of Redevelopment Project Costs. As set forth in the South Project Plan, after all of the above payments have been made, any surplus of funds shall be used first to reimburse redevelopment project costs attributable to the North Project, to the extent provided in a redevelopment agreement for the North Project, and second to the City, for any purpose authorized by the Act, but for not to exceed 20 years from the date of the approval of the South Project Plan.

If the City does not proceed with the City Project within sixty (60) months of the date this Agreement is signed, the 5% of Incremental Tax Revenues shall be used to reimburse Developer's Redevelopment Project Costs, in accordance with Section 3.02.

Section 6.02. TDD Sales Tax Fund.

A. Creation of Fund; Deposit of TDD Sales Tax. The City shall establish and maintain a separate fund and account known as the Ninth & New Hampshire TDD Sales Tax Fund (the "**TDD Sales Tax Fund**"). All TDD Sales Tax shall be deposited into the TDD Sales Tax Fund.

B. Disbursements from Fund. All disbursements from the TDD Sales Tax Fund shall be made only to pay TDD Costs. The City shall have sole control of the disbursements from the TDD Sales Tax Fund. The first \$850,000 collected in the TDD Sales Tax Fund will go to the City to reimburse costs related to the parking garage in the 900 block of New Hampshire Street. Amounts collected above this amount may be used to reimburse Developer for eligible TDD Costs otherwise not reimbursed by Incremental Tax Revenues.

All disbursements from the TDD Fund to reimburse TDD Costs shall first be applied against accrued but unpaid interest on TDD Costs, at the Actual Rate for Borrowed Funds without reducing the maximum reimbursable amount described in Section 3.02, and then to the reimbursement of the principal amount of

TDD Costs. The City may continue to use any surplus amounts of TDD Sales Tax after all TDD Costs have been reimbursed, for any purpose authorized by the TDD Act.

Section 6.03. City Administrative Service Fee. As a result of the public improvements being financed with Incremental Tax Revenues and the TDD Sales Tax, the City agrees not to charge any administrative service fees in connection with the administration and other City costs of the Incremental Tax Revenues and TDD Sales Tax.

Section 6.04 Developer Pay As You Go. Developer has elected to be reimbursed on a pay as you go basis as monies become available in the Tax Increment Fund and TDD Sales Tax Fund.

ARTICLE VII

ASSIGNMENT; TRANSFER

Section 7.01. Transfer of Obligations.

A. The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City Commission by resolution following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as determined by the City Manager, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Redevelopment District being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Redevelopment District, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees to record all assignments in the office of the Register of Deeds of Douglas County, Kansas, in a timely manner following the execution of such agreements.

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

C. The foregoing restrictions on assignment, transfer and conveyance shall not apply to (a) any security interest granted to secure indebtedness to any construction or permanent lender, or (b) the sale, rental and leasing of portions of the Redevelopment District for the uses permitted under the terms of this Agreement.

Section 7.02. Corporate Reorganization; Assignment or Transfer to Related Party. Notwithstanding anything in this Agreement to the contrary, the Developer may form additional

development or ownership entities to replace or joint venture with Developer for the purpose of estate planning or any other purpose; provided that the current principals of Developer, Capital Management, Inc., Douglas J. Compton, Michael L. Treanor and their lineal descendants) own not less than 51% of any new or restructured company (a "Related Entity"). Without limiting the generality of the previous sentence, the parties specifically acknowledge and agree that Developer intends to and may convey a portion of the Hotel Project to a Related Entity named "900 NH, Inc.," and may partially assign to such Related Entity Developer's rights to receive reimbursements hereunder. Any assignment or transfer to a Related Entity shall be automatically permitted by the City upon receipt by the City of the documentation described in Section 7.01.A.

Section 7.03. Prohibition Against Transfer of the Redevelopment District, the Buildings or Structures Therein. The Developer shall not, except as permitted by this Agreement and in accordance with the Act, without prior written approval of the City which shall not be unreasonably withheld, make any total or partial sale, transfer, conveyance, assignment or lease of the Hotel Project Site or the Hotel Project except as permitted by this Agreement. This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of the Redevelopment District or to prohibit or restrict the leasing of any part or parts of a building, structure or land for a term commencing on completion.

ARTICLE VIII

GENERAL COVENANTS

Section 8.01. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys fees, resulting from, arising out of, or in any way connected with:

1. the Developer's actions and undertaking in implementation of the South Project Plan or this Agreement; and
2. the negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project.
3. any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("**RCRA**"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34,

Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

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

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

Section 8.02. Insurance.

A. The Parties acknowledge and agree that the Developer's lender(s) will require that the Hotel Project be insured against casualty losses, commercial general liability insurance, workers' compensation insurance, and various other policies of insurance, in accordance and in connection with the grant by such lender(s) of a mortgage against the Hotel Project.

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

C. In the event the Developer shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the Developer shall promptly notify the City of such event and the City may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and the Developer agrees to reimburse the City to the extent of the amounts so advanced, with interest thereon at the Default Rate.

Section 8.03. Obligation to Restore.

A. Restoration of Project by Developer. The Developer hereby agrees that if any portion of the Hotel Project owned by it shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Developer shall promptly restore, replace or rebuild the same, or shall promptly cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld. The Developer shall give prompt written notice to the City of any damages or destruction to any of the Hotel Project owned by it by fire or other casualty, irrespective of the amount of such damage or destruction, but in such circumstances the Developer shall make the property safe and in compliance with all applicable laws as provided herein.

B. Restoration of Project by Third Parties. The Developer further agrees that each contract, lease or sublease relating to the development, ownership or use of any portion of the Hotel Project not owned or controlled by the Developer shall include a provision to the effect that if any portion of the Hotel Project controlled by such owner, lessee or sublessee shall be damaged or destroyed, in whole or in part, by fire or other casualty, such owner, lessee or sublessee shall promptly restore, replace or rebuild the same (or shall promptly cause the same to be restored, replaced or rebuilt) to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the Developer and the City, which approval shall not be unreasonably withheld. The Developer agrees that each contract, lease or sublease relating to the development, ownership or use of any portion of the Hotel Project shall include a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a lender, the lender shall be obligated to restore certain portions of the Hotel Project in accordance with this Section. Each owner, lessee or sublessee shall also be required to give prompt written notice to the Developer and the City of any damages or destruction to any of the Hotel Project owned by such person by fire or other casualty, irrespective of the amount of such damage or destruction.

C. Restoration of Public Improvements. The City and the Developer agree that if any portion of the Hotel Project then owned by the City shall be damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), the City and the Developer shall apply any insurance proceeds or other proceeds, or require each insurance company to apply all insurance proceeds, to promptly restore, replace or rebuild the same (or shall promptly cause the same to be restored, replaced or rebuilt) to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld. The Developer shall give prompt written notice to the City (and the City shall give prompt written notice to the Developer) of any damages or destruction to any of the Hotel Project then owned by the City by fire or other casualty, irrespective of the amount of such damage or destruction.

D. Enforcement. The restrictions set forth in this Section are for the benefit of the City and may be enforced by the City by a suit for specific performance or for damages, or both.

Section 8.04. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the Redevelopment Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01. Developer Event of Default. Subject to Section 9.05, a “**Developer Event of Default**” shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of 30 days after City has delivered to Developer a written notice

specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.02. City Event of Default. Subject to **Section 9.05**, the occurrence and continuance of any of the following events shall constitute a “**City Event of Default**” hereunder:

A. Default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of 30 days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.03. Remedies Upon a Developer Event of Default.

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

1. The City shall have the right to terminate this Agreement or terminate the Developer’s rights under this Agreement.

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

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

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

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

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

Section 9.04. Remedies Upon a City Event of Default.

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

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement;

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

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

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

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

Section 9.05. Excusable Delays. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay.

Section 9.06. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Douglas County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

ARTICLE X

GENERAL PROVISIONS

Section 10.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

Section 10.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Hotel Project or the Redevelopment District. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 10.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 10.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 10.05. Agreement Controls. The Parties agree that the South Project Plan will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Redevelopment Project Costs and all other methods of implementing the South Project Plan. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the South Project Plan and that expand upon the estimated and anticipated sources and uses of funds to implement the South Project Plan. Nothing in this Agreement shall be deemed an amendment of the South Project Plan. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 10.06. Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

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

Section 10.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect for twenty (20) years from the date of approval of the South Project Plan.

Section 10.08. Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 10.09. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 10.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 10.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 10.12. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City Clerk
City Hall
Box 708
Lawrence, Kansas 66044-0708

To the Developer:

900 New Hampshire, LLC
c/o First Management, Inc.
601 North Iowa
P.O. Box 1797
Lawrence, Kansas 66044

With a copy to:

Toni Ramirez Wheeler
City Attorney
City Hall
Box 708
Lawrence, Kansas 66044-0708

With a copy to:

William N. Fleming
110 McDonald Drive, Suite 192
Lawrence, Kansas 66044

and

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

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

Section 10.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 10.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

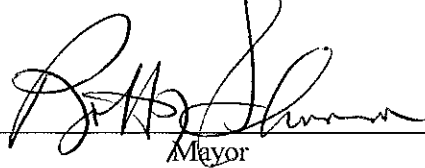
Section 10.15. Recordation of Agreement. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Douglas County, Kansas. This Agreement shall be recorded by the Developer, and proof of recording shall be provided to the City.

Section 10.16. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

[The remainder of this page intentionally left blank.]


THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF LAWRENCE, KANSAS

By: 
Mayor

(SEAL)

ATTEST:


City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

On 12/04, 2012, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert J. Schumm and Jonathan Douglas, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument as Mayor and City Clerk, respectively, of the CITY OF LAWRENCE, KANSAS, the city of the first class therein named, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public

My commission expires:


03/21/16



THIS AGREEMENT has been executed as of the date first hereinabove written.

900 NEW HAMPSHIRE, LLC

By: 900 NH, Inc., Manager

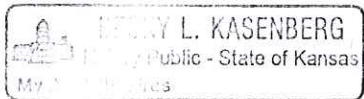
By 
Charles E, Mackey, President


ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

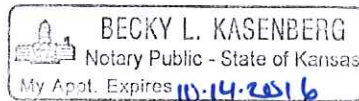
On December 3, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles E. Mackey, President of 900 NH, Inc., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as the manager of 900 NEW HAMPSHIRE, LLC and acknowledged to me that he executed the same in his authorized capacities, and that by such person's signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.




Notary Public

My commission expires:



10-14-2016

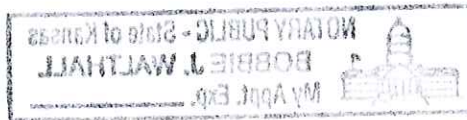


EXHIBIT A

LEGAL DESCRIPTION AND MAP OF REDEVELOPMENT DISTRICT

North Project Area

Lots 60, 62, 64, 66, and 68 New Hampshire Street, and Lot 61 Rhode Island Street, City of Lawrence, Douglas County, Kansas and adjacent right-of-way of alley to the east, and adjacent right-of-way of New Hampshire Street to the west and extending north from northern boundary of the project area through the 8th Street intersection.

South Project Area

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

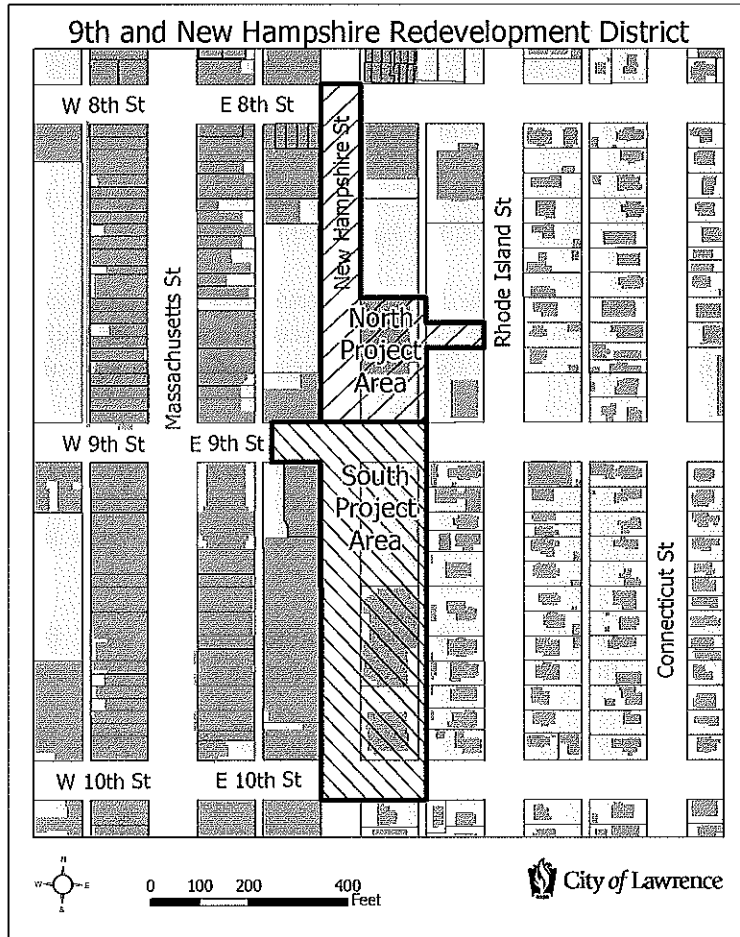


EXHIBIT B-1

FORM OF CERTIFICATE OF REDEVELOPMENT PROJECT COSTS

CERTIFICATE OF REDEVELOPMENT PROJECT COSTS

TO: City of Lawrence, Kansas
Attention: City Manager

Re: Ninth & New Hampshire Redevelopment District – South Project Area

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Ninth & New Hampshire Tax Increment Financing District Development Agreement for the South Project Area dated as of October _____, 2012 (the "Agreement") between the City and the Developer.

In connection with the Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is a Redevelopment Project Cost and was incurred in connection with the construction of the Hotel Project after August 7, 2012 and is included in or contemplated by Exhibit G of the South Project Plan. Any item listed on *Schedule 1* hereto that also references expenses that are not Redevelopment Project Costs have been identified herein.

2. These Redevelopment Project Costs have been paid by the Developer and are reimbursable under the South Project Plan and the Agreement.

3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the Tax Increment Fund or any money derived from any project fund established by the issuance of any TIF Obligations, and no part thereof has been included in any other certificate previously filed with the City.

4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.

6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a Redevelopment Project Cost within the meaning of the Act and the Agreement.

8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

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

Dated this _____ day of _____, 20____.

900 NEW HAMPSHIRE, LLC,
a Kansas limited liability company

By: _____

Name: _____

Title: _____

Approved for Payment this _____ day of _____, 20____:

CITY OF LAWRENCE, KANSAS

By: _____

Title: _____

EXHIBIT B-2

FORM OF CERTIFICATE OF TDD COSTS

CERTIFICATE OF TDD COSTS

TO: City of Lawrence, Kansas
Attention: City Manager

Re: Ninth & New Hampshire Redevelopment District – South Project Area

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Ninth & New Hampshire Tax Increment Financing District Development Agreement for the South Project Area dated as of October _____, 2012 (the "Agreement") between the City and the Developer.

In connection with the Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is a TDD Cost and was incurred in connection with the construction of the Hotel Project after August 7, 2012.
2. These TDD Costs have been paid by the Developer and are reimbursable under the TDD Act and the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the TDD Sales Tax Fund, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a Redevelopment Project Cost within the meaning of the Act and the Agreement.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20____.

900 NEW HAMPSHIRE, LLC,
a Kansas limited liability company

By: _____

Name: _____

Title: _____

Approved for Payment this _____ day of _____, 20____:

CITY OF LAWRENCE, KANSAS

By: _____

Title: _____

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, **900 New Hampshire, LLC** (the “**Developer**”), pursuant to that certain Ninth & New Hampshire Tax Increment Financing District Development Agreement for the South Project Area dated as of _____, 2012, between the **City of Lawrence, Kansas** (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, 20____, Substantial Completion of the Hotel Project (as such term is defined in the Agreement) has been completed in accordance with the Agreement.
2. The Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
3. Lien waivers for applicable portions of the Hotel Project have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein), certifying that the Hotel Project has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.

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

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

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

900 NEW HAMPSHIRE, LLC
a Kansas limited liability company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF LAWRENCE, KANSAS

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT D

HOTEL PROJECT BUDGET

Project Item	Project Cost
Land Acquisition	\$695,000
Site Improvement Costs	845,287
Underground Parking Garage	2,507,472
Hotel/Apt./Retail Structure	10,157,300
Soft Costs	1,320,351
Financing Costs	200,000
Developer Fee (4%)	540,402
Furniture, Fixtures & Equipment for Hotel	891,000
Legal Fees	100,000
TOTAL PROJECT COSTS	\$17,256,812

EXHIBIT E

DESIGN STANDARDS

The City of Lawrence Downtown Area Design Guidelines shall apply to the development.

EXHIBIT F

**REQUIRED COVENANTS, CONDITIONS & RESTRICTIONS
FOR THE REDEVELOPMENT DISTRICT**

Requirement that the Hotel Project be operated and maintained as 3 Diamond rated hotel as determined by the American Automobile Association hotel rating system, or if such system is discontinued, a similar rating system agreed to in writing by the City and the Developer and that the City will have the right to review the Developer's operations to assure compliance with this covenant. In the event that the revenues of the Hotel Project do not meet at least 75% of the projections contained in the feasibility report attached to the South Project Plan, the City has the right to request the appointment of a hotel consultant to be engaged on behalf of the City and paid for by the Developer to make recommendations regarding the operations of the Hotel Project. In the event specific recommendations are made by the consultant with respect to the Hotel Project, the Developer agrees to cooperate in the implementation of such recommendations within a reasonable period of time.

EXHIBIT G

FORM OF CERTIFICATE OF MINIMUM INVESTMENT

CERTIFICATE OF MINIMUM INVESTMENT

The undersigned, pursuant to that certain Ninth & New Hampshire Tax Increment Financing District Development Agreement for the South Project Area dated as of October _____, 2012 (the "Agreement"), between the **City of Lawrence, Kansas** (the "City") and **900 New Hampshire, LLC** (the "Developer"), hereby certifies to the City as follows:

1. That as the undersigned is an accredited certified public accountant and is familiar with the funding of the construction and equipping of the Hotel Project (as such term is defined in the Agreement).
2. Based on the Certificate of Substantial Completion (as such terms is defined in the Agreement) of the Developer, the undersigned understands that the Hotel Project has been substantially completed.
3. Not less than \$14,000,000 has been spent on the Hotel Project by the Developer from August 7, 2012 to the date hereof.

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

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

[CERTIFIED PUBLIC ACCOUNTANT]

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF LAWRENCE, KANSAS

By: _____
Name: _____
Title: _____

