

FUNDING AGREEMENT

This Funding Agreement ("Agreement") is entered into this 8th day of August, 2017, by City of Lawrence, Kansas, a municipal corporation ("City"), and Treanor Investments, LLC, a Kansas limited liability company ("Developer").

RECITALS

WHEREAS, the City is a political subdivision organized and existing under the laws of the State of Kansas, with its principal office located at 6 East 6th Street, Lawrence, Kansas 66044; and

WHEREAS, the Developer is a Kansas limited liability company engaged in the business of development with its principal office located in the City at the address described in Section 8 of this Agreement. The City has been requested by the Developer to provide certain incentives for a proposed project in the City, including creating a redevelopment district within the City, in accordance with the Tax Increment District Financing Act, K.S.A. 12-1770 *et seq.* (the "Act"), issuing industrial revenues for a sales tax exemption on construction materials and an approximately \$2,250,000 loan from the City (collectively, the "Request") and, if such Request is approved by the City, the City may be requested to provide such other services and assistance as may be required to implement and administer the Request through its completion; and

WHEREAS, the City does not have a source of funds to finance costs incurred for additional legal, financial and planning consultants or for direct out-of-pocket expenses and other costs resulting from services rendered to the Developer to review, evaluate, process and consider the Request; and

WHEREAS, the parties desire to enter into this Agreement to provide for the funding of consultants used by the City to evaluate the Request.

AGREEMENT

1. **Services to be Performed by the City.** The City shall:

- A. Prepare or consult with the Developer on the preparation of and consider the Request in accordance with the provisions of the Act, give all notices, make all publications and hold hearings as required by the Act;
- B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Request to the City and to prepare and present required ordinances to the City Commission of the City, including the use of outside counsel and consultants;
- C. If the City Commission approves the Request, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for implementation of the Request; and
- D. If a redevelopment agreement is entered into between the City and the Developer, provide the necessary staff, legal, financial and planning assistance to administer such agreement and Developer agrees to fully cooperate and assist the City's administration of such agreement.

Developer understands and acknowledges that the consideration of the Request by the governing body of the City is discretionary and that the City's execution of this Agreement is not an indication of the intent of the governing body of the City to approve any or all of the Request.

2. Initial Deposit. The City acknowledges receipt of Thirty Thousand Dollars (\$30,000.) (the "Deposit") from the Developer. The City shall disburse the Deposit as set forth in Section 4 and shall bill the Developer pursuant to Section 3 to re-establish the Deposit so that there is always a minimum cash balance of Ten Thousand Dollars (\$10,000.00) available, from which additional disbursements may be made as required.

3. Additional Funding.

A. The City shall submit an itemized statement for administrative expenses and actual out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City. Such statements shall be submitted on a regular periodic basis, but no more often than monthly. The Developer shall pay the City the amounts set forth on such statements (the "Additional Funds") within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed twenty-four percent (24%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 6.a. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for all its administrative expenses and actual out-of-pocket expenses necessary to perform the City's obligations hereunder, including but not limited to costs of, Gilmore & Bell, P.C. for special legal counsel, National Development Council (NDC) for feasibility analysis and "but for" analysis, a consultant to perform a market analysis to include the impact of the project on redistributed sales tax within the City of Lawrence, costs of counsel and any other professionals for the proposed loan, issuance of industrial revenues and any required publication costs incurred by the City in processing the Request. The City shall advise the Developer in writing if it intends to utilize the services of any other consultant to perform its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. If the Developer, in writing, within five (5) business days from receipt of the City's notice, objects to either the consultant named or the service to be performed, the City and Developer shall negotiate in good faith to resolve the Developer's objections. If the City and Developer cannot agree on the consultant to be used or the service to be performed, the City shall have no obligation to perform that service under the terms of this Agreement and the Developer shall have no obligation to pay for such service under the terms of this Agreement.

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer with respect to such disbursements.

5. Reimbursement of Funds. Notwithstanding anything in this Agreement to the contrary, City and Developer acknowledge and agree that some or all of the funds disbursed to the City in accordance with this Agreement shall constitute "redevelopment project costs" as defined in the Act, and shall be eligible for reimbursement in accordance with the Act and the redevelopment agreement from any bonds issued

under the Act pursuant to a redevelopment project plan approved by the City Commission in accordance with the Act, regardless of whether the funds were paid or disbursed before the formation of the redevelopment district under the Act. If a redevelopment project plan is approved by the City but no bonds are issued under the Act, then the Developer may seek reimbursement of such funds disbursed under this Agreement by utilizing the "direct reimbursement method."

6. Termination.

A. In the event the Developer fails to perform any of its obligations herein or provides any information in connection with the Request that is false or misleading, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within ten (10) days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement, including, but not limited to, the City's processing of Request. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

B. The parties hereto acknowledge that the Developer may determine to abandon the Request. Upon notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

C. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in Section 3. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

7. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City Manager
City of Lawrence, Kansas
6 East 6th Street
Lawrence, Kansas 66044

To the Developer:

Treanor Investments, LLC
c/o William Fleming
1040 Vermont Street
Lawrence, Kansas 66044

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF LAWRENCE, KANSAS

By: _____
Thomas M. Markus, City Manager

Attest:

By: _____
Sherri Riedemann, City Clerk

Approved as to form:

Toni Wheeler, City Attorney

Treavor
Investments, LLC

By:  _____
Name, Title