

DEVELOPMENT AGREEMENT
FOR
THE BOULEVARD LOFTS PROJECT

between the

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

and

Boulevard Lofts, LP

DATED AS OF _____, 2019

**DEVELOPMENT AGREEMENT FOR
THE BOULEVARD LOFTS PROJECT**

THIS AGREEMENT is entered into between the **UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS**, a municipal corporation organized and existing pursuant to the laws of the State of Kansas as a consolidated city-county having all the powers, functions and duties of a county and a city of the first class (the "**Unified Government**"), and **BOULEVARD LOFTS, LP**, a Kansas limited partnership, and together with the Unified Government, the "**Parties**"), and is dated as of the date set forth on the cover page of this Agreement.

RECITALS

WHEREAS, the Developer wishes to design, develop, and construct the Project on real property generally located at 819 Everett Avenue; 821 Everett Avenue; 829 Everett Avenue; 841 Everett Avenue; 847 Everett Avenue; 849 Everett Avenue; 851 Everett Avenue; 830 Washington Avenue; and 1304 H N 8th Street, all properties located in Kansas City, Wyandotte County, Kansas (the "Project Site"), as generally depicted on Exhibit A, as attached hereto;

WHEREAS, the Developer owns the Project Site and has all rights to occupy and develop the Project Site as set forth herein;

WHEREAS, the Unified Government recognizes that there is need for new, high quality affordable residential options in the northeast area of Kansas City, Kansas and that the Project will stimulate the growth of new businesses in the area and further revitalize the northeast area.

WHEREAS, development of the Project on the Project Site would create jobs, stimulate the Unified Government economy through additional real property taxes, sales taxes, and other indirect spending at nearby businesses from residents living at the Project Site, all of which would promote the public good, health, and welfare within Wyandotte County; and

WHEREAS, the Parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement and therefore the Parties wish to enter into this Agreement to provide the necessary financing for the Project.

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.

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:

"Action" has the meaning set forth in **Section 8.01**.

"Affiliate" means any person, entity, or group of persons or entities which controls the Developer, which the Developer controls or which is under common control with the Developer. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Agreement, as amended from time to time.

"Annual gross rent" means the annual total of all rents collected for all units in the project.

"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. Applicable Law and Requirements shall include, without limitation, the Kansas Cash-Basis Law (K.S.A. § 10-1101, et. seq.) and the budget provisions found at K.S.A. § 79-2925 *et. seq.*

"Certificate of Reimbursable Project Costs" means a certificate relating to Project Costs in substantially the form attached hereto as Exhibit C.

"City" means the City of Kansas City, Kansas.

"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 Unified Government in accordance with this Agreement.

"County" means Wyandotte County, Kansas.

"Developer" means Boulevard Lofts, LP, a Kansas limited partnership, and any successors and assigns approved or otherwise permitted pursuant to this Agreement.

"Developer Event of Default" means any event or occurrence defined in Section 9.01.

"Developer Representative" means Kelley Hrabe and such other person or persons at the time designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written

certificate furnished to the Unified Government 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, power failure, strike, unavailability of labor or materials, delays in the processing of Permitted Subsequent Approvals as a result of unreasonable delay on the part of the applicable Governmental Authorities, 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, 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 Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder. Notwithstanding the foregoing, the parties hereby understand and agree that "Excusable Delays" shall not include delays resulting from the inability of a Party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

"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 Project and consistent with 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.

"Investor-approved rent" means the estimated annual total of all rents to be collected for all units in the Project for the year, as those rents were calculated by the project investor and based on the appraisal. Such amount is increased by a factor of two percent from year to year, as set forth in Exhibit J.

"KHRC-approved rent" means the annual total of all rents authorized by the Kansas Housing Resources Corporation for all units in the project for the year. Such amount is increased by a factor of two percent from year to year, as set forth in Exhibit J.

"Parties" means the Developer and the Unified Government and their successors and assigns.

"Pay As You Go" has the meaning set forth in Section 3.03.

"Permitted Subsequent Approvals" means the zoning and 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 Unified Government or other governmental entity has not yet determined to grant.

"Plans" means Site Plans, Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with Unified Government code, applicable laws of Governmental Authorities, and this Agreement.

"Project" means the design, development, and construction of fifty (50) affordable housing units on the Project Site to be known as the "Boulevard Lofts".

"Project Budget" means the project budget as prepared and designed by the Developer, as set forth in Exhibit E.

"Project Costs" means the costs of designing, developing, and constructing the Project, as estimated in the Project Budget.

"Project Site" has the meaning set forth in the Recitals hereto to the extent acquired by the Developer in its sole discretion.

"Reimbursable Project Costs" means all costs that are certified for reimbursement by the Unified Government as set forth herein, as set forth in Exhibit F.

"Reimbursable Project Costs Cap" means \$200,000 in Reimbursable Project Costs. The Reimbursable Project Costs Cap shall be subject to reduction as set forth in Section 3.07 and Exhibit F of this Agreement.

"Real Property Tax Revenues" means the revenues actually received by the Unified Government from the real property taxes levied by Wyandotte County and by the City of Kansas City, Kansas against those portions of the Project Site occupied by Developer from time to time.

"Site Plan" means the final site plan for the Project Site submitted by the Developer to the Unified Government and approved by the Unified Government pursuant to applicable Unified Government ordinances, regulations, and Unified Government code provisions, which may either be approved as a whole or approved in phases or stages.

"Unified Government" means the Unified Government of Wyandotte County/Kansas City, Kansas.

"Unified Government Event of Default" means any event or occurrence defined in Section 9.02.

"Unified Government Representative" means the County Administrator and/or Deputy County Administrator, and such other person or persons at the time designated to act on behalf of the Unified Government in matters relating to this Agreement.

"Unified Government Indemnified Parties" has the meaning set forth in Section 8.01.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations of Unified Government. The Unified Government makes the following representations and warranties, which are true and correct on the date hereof:

A. Due Authority. The Unified Government 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 Unified Government proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Unified Government, 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. There is no litigation, proceeding or investigation pending or, to the knowledge of the Unified Government, threatened against the Unified Government with respect to this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Unified Government, threatened against the Unified Government 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 Unified Government to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity, or performance by the Unified Government of the terms and provisions of this Agreement.

D. Governmental or Corporate Consents. Other than the resolution approved by the Unified Government's Commission to authorize the execution and delivery of this Agreement, no other 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 Unified Government 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 Unified Government under this Agreement.

Section 2.02. Representations of the Developer.

The Developer makes the following representations and warranties, which 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, except as disclosed to the Unified Government, 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 Unified Government 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, other than Permitted Subsequent Approvals.

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, consent s, 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 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 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, and operations as contemplated by this Agreement.

J. Other Disclosures. The information furnished to the Unified Government 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. Project. The Developer represents and warrants that the Project Site is sufficient to construct the Project as contemplated in this Agreement.

Section 2.03. Developer's Acquisition of the Project Site. At the time that this Agreement is executed, Developer represents that it has already purchased or has the contractual right to purchase fee simple title to all the real property within the Project Site. All of the real property to be acquired by the Developer, subject to the rights of assignment under **Article VII**, shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained in this Agreement immediately upon acquisition and prior to any encumbrances placed thereon.

ARTICLE III

REIMBURSEMENT OF PROJECT COSTS

Section 3.01. Project Costs, Generally. In consideration for the Developer's agreement to construct the Project, the Unified Government agrees to reimburse the Developer for Reimbursable Project Costs, subject to the Reimbursable Project Costs Cap, and subject to all of the terms and conditions of this Agreement, including the pre-conditions for reimbursement as set forth herein. The Parties anticipate that the Developer will be reimbursed on a Pay As You Go basis as further set forth in this Agreement. Though neither party has given the other any assurances or guarantees regarding the Real Property Tax Revenues or reimbursements to be paid pursuant to the terms of this Agreement, the parties hereby agree that the Reimbursable Project Costs Cap and the incentives set forth herein were based upon the estimated reimbursable project costs set forth in Exhibit F, attached hereto.

Section 3.02. Developer to Advance Costs. Upon Developer's determination to move forward with the design, development, and construction of any phase of the Project, the Developer agrees to advance all Project Costs as necessary to complete such phase of the Project, all subject to the Developer's right to terminate this Agreement as set forth in Section 7.03(c).

Section 3.03. Unified Government's Obligation to Reimburse Developer.

A. Source of Reimbursement. Subject to the terms of this Agreement and the conditions in this Section, and provided that no Developer Event of Default has occurred hereunder that has not been timely cured, then the Unified Government hereby agrees to reimburse Developer for Reimbursable Project Costs on a "Pay As You Go" basis in a total amount not to exceed the Reimbursable Project Costs Cap. On a bi-annual basis, the Unified Government hereby agrees that Developer shall be reimbursed for its

Reimbursable Project Costs solely from the Real Property Tax Revenues available at such time (the "Pay As You Go" method). The Parties agree that all reimbursement to the Developer shall be made only on a Pay As You Go basis, and nothing in this Agreement shall in any way obligate the Unified Government to issue bonds or other obligations to reimburse Developer. The Parties also agree that nothing in this Agreement shall in any way obligate the Unified Government to reimburse Developer for (i) any cost that is not a Reimbursable Project Cost, or (ii) any Reimbursable Project Costs in excess of the Reimbursable Project Costs Cap.

B. Timing of Reimbursement. The Unified Government shall have no obligation to reimburse Developer until Real Property Tax Revenues, as applicable, are available. Subject to the terms and conditions set forth in this Agreement, the Unified Government hereby agrees to make bi-annual reimbursement payments to Developer from the available Real Property Tax Revenues (with the first payment on or before March 31st and the second payment on or before June 30th) as follows:

C. Conditions for Reimbursement. The Parties hereby understand and agree that the Unified Government shall have no obligation to reimburse the Developer for any Reimbursable Project Costs if:

(i) Developer has not yet completed and opened the facility for business and is actively leasing units to the public. This shall be a precondition to any reimbursement of Reimbursable Project Costs hereunder.

(ii) Subsequent to opening for business, the Project shall fail to Continuously Operate (as defined in **Section 5.03** below) on the Project Site.

(iii) Developer shall transfer the Project Site, or without complying with the terms and conditions of **Article VII** hereof, including without limitation, any required consent or approval of the Unified Government.

(iv) A Developer Event of Default shall occur hereunder and has not been timely cured.

Additionally, the parties hereby understand and agree that the reimbursements set forth in this Agreement shall be subject to annual appropriation by the Unified Government's Commission.

Term and Percentage of Reimbursement. Subject to the Reimbursable Project Costs Cap, Real Property Tax Revenues associated with the following portions of the Project Site shall be made available to Developer on a Pay As You Go basis to reimburse Reimbursable Project Costs in accordance with the terms as follows, as well as all other terms of this Agreement: a portion of Unified Government's Real Property Tax Revenues (The City of Kansas City, Kansas and Wyandotte County only) until such time as the Reimbursable Project Costs Cap is met, subject to the limitation set forth in **Section 3.08**.

The 10-year term for Real Property Tax Revenues for the Project shall commence on January 1 of the year in which the County first fully appraises the completed project improvements for such Project, or upon such earlier date upon mutual agreement of the Unified Government and Developer.

D. Outside Date for Reimbursement. Notwithstanding anything else set forth in this Agreement to the contrary, the Parties hereby agree that the reimbursements contemplated herein shall end on or before the date on which Developer is reimbursed with Real Property Tax Revenues for tax year 2030. In no event shall the Unified Government make any reimbursements of Real Property Tax Revenues after such time.

Section 3.04. Developer Reimbursement Process.

A. All requests for reimbursement of Reimbursable Project Costs shall be made in a Certificate of Reimbursable Project Costs in substantial compliance with the form attached hereto as **Exhibit C**. Requests for reimbursement shall be submitted by the Developer to the Unified Government (or its designated representatives) as a package. The Developer shall provide itemized invoices, real estate contracts, lien waivers, receipts, or other information reasonably requested, if any, to confirm that any such cost has been paid and qualifies as a Reimbursable Project Cost, and shall further provide a summary sheet detailing the costs requested to be reimbursed. Such summary sheet shall show the date such cost was paid, the payee, a brief description of the type of cost paid, and the amount paid. The Developer shall provide such additional information as reasonably requested by the Unified Government (or its designated representatives) to confirm that such costs have been paid and qualify as Reimbursable Project Costs.

B. The Unified Government reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Reimbursable 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 Unified Government to evaluate compliance with the terms hereof.

C. The Unified Government shall have 30 calendar days after receipt of any Certificate of Reimbursable Project Costs to review and respond by written notice to the Developer. If the submitted Certificate of Reimbursable Project Costs and supporting documentation demonstrates that (1) the request is for valid Reimbursable Project Costs, (2) the work has been completed and the expense has been paid, (3) Developer is not in material default under this Agreement, and (4) there is no fraud on the part of the Developer; then the Unified Government shall reasonably approve the Certificate of Reimbursable Project Costs. If the Unified Government reasonably disapproves of the Certificate of Reimbursable Project Costs, the Unified Government shall notify the Developer in writing of the reason for such disapproval within such 30-day period. Approval of the Certificate of Reimbursable Project Costs will not be unreasonably withheld.

Section 3.05. Right to Inspect and Audit. The Developer agrees that, up to one year after completion of the Project and opening for leasing to the public, the Unified Government, 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 Reimbursable Project Costs associated with the Project (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 3.06. Limitation on Unified Government's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the Unified Government's obligation to reimburse the Developer for Reimbursable Project Costs shall be limited to available Real Property Tax Revenues and shall not be payable from any other source.

Section 3.07. Reduction of Caps. The parties agree that in the event that Developer fails to meet the LBE/MBE/WBE goals set forth in **Exhibit I**, the Reimbursable Project Costs Cap shall be reduced as set forth therein.

Section 3.08. Full and Partial Payment Authorized. Notwithstanding any other provision of this Agreement to the contrary, Reimbursable Project Costs shall be paid as follows:

A. An amount equal to one hundred percent (100%) of the Real Property Tax Revenues for the year, less the Unified Government Administrative Fee, if the annual gross rent is an amount that is equal to or less than the Investor-approved rent for the year;

B. An amount equal to seventy-five percent (75%) of the Real Property Tax Revenues for the year, less the Unified Government Administrative Fee, if the annual gross rent is an amount that is greater than the Investor-approved rent for the year but less than the KHRC-approved rent for the year; or

C. An amount equal to fifty percent (50%) of the Real property Tax Revenues for the year, less the Unified Government Administrative Fee, if the annual gross rent is an amount that is equal to or greater than the KHRC-approved rent for the year.

ARTICLE IV

THE PROJECT

Section 4.01. Undertaking of Developer. Developer hereby agrees, subject to the terms and conditions hereinafter provided, to construct, complete, and operate the Project, subject to the Developer's right to terminate this Agreement at any time under Section 7.03(c) hereof, at which time the Parties shall

have no further obligations hereunder. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the Unified Government, except as otherwise specifically provided herein.

Section 4.02. Project Budget. Upon construction of the Project, in whole or in part, it shall be constructed substantially in accordance with the Project Budget.

Section 4.03. Design of Project. In order to further the development of the Redevelopment District, the Unified Government hereby authorizes the Developer to construct, or cause to be constructed, the Project according to the final Plans approved by the Unified Government.

Section 4.04. Rights of Access. Representatives of the Unified Government shall have the right of access to the Project Site, without charges or fees, 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 Unified Government will check in with the on-site manager. Such representatives of the Unified Government shall carry proper identification, shall insure their own safety, shall assume the risk of injury, and shall not interfere with the construction activity.

ARTICLE V

USE OF THE PROJECT SITE

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

A. No Tax-Exempt Organizations. This Agreement shall be terminated if the Developer sells or leases any property within the Project Site to a tax-exempt organization, except that this prohibition shall not prevent the granting of any temporary or permanent easements necessary to facilitate the construction of the Project, and further provided, that such sale or lease shall be permitted if the transaction does not impact the tax status of the property or if a payment in lieu of taxes agreement mutually agreeable to the Parties is established, or if the UG otherwise consents to such sale or lease.

Section 5.02. Operation of Project. The parties hereby agree as follows:

A. The Project shall comply with all applicable building and zoning, health, environmental, and safety codes and laws, and all other Applicable Laws 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 Unified

Government 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 5.03. Continuous Operation. Developer hereby agrees that after the opening of the Project, Developer shall thereafter "Continuously Operate" by continuously conducting business on the Project Site during the Term of this Agreement For purposes of this Agreement, "Continuously Operate" shall mean leasing residential units to members of the public for habitation year round, without interruption except for such unavoidable stoppages due to emergency repair work, fire, or damage and destruction caused by acts of nature.

Section 5.04. Taxes, Assessments, Encumbrances and Liens.

A. So long as the Developer owns real property within the Project Site, the Developer shall pay when due all real estate taxes and assessments on the property it owns within the Project Site. In the event that the Developer shall fail to pay all such applicable real estate taxes and assessments, the parties understand and agree that the Unified Government may suspend all reimbursements of Reimbursable Project Costs during any time that such real estate taxes and assessments on the property the Developer owns within the Project Site remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that (i) Developer shall pay any and all amounts that are contested under protest while any such proceedings are pending, and (ii) the Unified Government shall suspend all reimbursements of Real Property Tax Revenues during any time that such proceedings are pending final resolution. The Developer and any other owners of real property within the Project Site shall promptly notify the Unified Government in writing of a protest of real estate taxes or valuation of the Developer's or such other owners' property within the Project Site.

B. Subject to **Section 5.06**, Developer agrees that no mechanics' or other liens shall be established or remain against the Project or Project Site, 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 Unified Government in the event any liens are filed against the Project as a result of acts of the Developer, its agents or independent contractors.

C. Developer hereby covenants and agrees that it shall not take any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any [sales taxes, use taxes, and/or] property taxes payable to the Unified Government [or the State] in connection with sales made or services from, in or on and about the Project Site.

Section 5.05. 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 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 Project or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such holder to devote the Project 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. With respect to any mortgage granted by Developer as provided herein, whenever the Unified Government 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 Unified Government 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 Unified Government has been requested to do so in writing by Developer .

D. Construction Period Financing. 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 Project or any aspect thereof.

Section 5.06. 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, sexual orientation, gender identity, marital status, age, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project Site, 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 Project Site.

The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Unified Government, its successors and assigns,

and any successor in interest to the Project or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

ARTICLE VI

REIMBURSEMENT OF REIMBURSABLE PROJECT COSTS

Section 6.01. Unified Government's Administrative Fee. Prior to the calculation of the first bi-annual reimbursement in any calendar year of any Reimbursable Project Costs to Developer as set forth herein from time to time, the parties hereby agree that the Unified Government shall first pay itself an administrative fee of \$2,000 for such calendar year (the "Unified Government Administrative Fee"). Such administrative fees shall have priority over reimbursement of Reimbursable Project Costs but shall not be applied to the Reimbursable Project Costs Cap.

Section 6.02. Disbursement of Real Property Tax Revenues. All disbursements of Real Property Tax Revenues shall be made only to reimburse Reimbursable Project Costs. The Unified Government shall have sole control of such disbursements.

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 Unified Government Commission by resolution following verification by the Unified Government Chief Counsel that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the County Administrator, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Project Site being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the Unified Government, 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 Project Site, 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 Unified Government specifically agrees to release the Developer. The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Register of Deeds of Wyandotte County, Kansas, in a timely manner following the execution of such agreements. The terms of **Section 5.01(A)** shall apply to any transfers to entities exempt from property taxation.

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 Project Site 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 Project Site except the Developer shall be entitled to any rights whatsoever or claim upon the reimbursements of Sales Tax Revenues or the Real Property Tax Revenues as set forth herein, except as specifically authorized in writing by the Developer.

C. The foregoing restrictions on assignment, transfer and conveyance and the restriction in **Section 7.03** 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 Project Site for the uses permitted under the terms of this Agreement.

Section 7.02. Developer Reorganization. Nothing herein shall prohibit (or require Unified Government approval to allow) the Developer from forming additional development or ownership entities to replace or joint venture with the Developer for the purpose of business and/or income tax planning; provided that one or more of the principals of the Developer maintains management control of any new or restructured company. The Developer shall provide the Unified Government written notice of any such restructuring within thirty (30) days of any such restructuring.

Section 7.03. Prohibition Against Transfer of Project, Buildings, or Structures Therein.

A. During the Term of this Agreement, the Developer shall not, except as permitted by this Agreement, without prior written approval of the Unified Government, which shall not be unreasonably withheld, conditioned or delayed, make any total sale, transfer, conveyance, assignment or lease of the Project Site. This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of the Project Site or to prohibit or restrict the sale or leasing of any part or parts of a building, structure or land commencing on completion.

B. As a condition to such transfer, the Unified Government may require such transferee to agree to be bound, in whole or in part, by the provisions of this Agreement.

C. Notwithstanding the foregoing, Developer may terminate this Agreement at any time and thereafter transfer or sell the real property that makes up the Project Site without any Unified Government approval or consent.

ARTICLE VIII
GENERAL COVENANTS

Section 8.01. Indemnification of Unified Government.

A. Developer agrees to indemnify and hold the Unified Government, its employees, agents and independent contractors and consultants (collectively, the **"Unified Government 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 reasonable attorney's fees, resulting from, arising out of, or in any way connected with:

1. the acquisition of the Project Site;
2. the management, design, construction, development and completion of the Project by the Developer,
3. the use or occupation of the Project Site by Developer or anyone acting by, through, or under the Developer;
4. damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on, or about the Project Site;
5. any breach, default, or failure to perform by the Developer under this Agreement;
6. any act by an employee of the Unified Government at the Project Site which is within or under the control of the Developer or pursued for the benefit of, or on behalf of, the Developer;
7. the Developer's actions and undertaking in implementation of the Project or this Agreement; and
8. 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 negligence or willful misconduct of the Unified Government 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.), (iii) Article 34, Chapter 65, K.S.A., and all amendments thereto, and any other Applicable Laws and Requirements at the Project Site or any other 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 Unified Government 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 Unified Government Indemnified Parties hereunder, the Unified Government Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to a Unified Government Indemnified Party. After receipt of such notice, Developer may elect to defend, contest, or otherwise protect a Unified Government Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel approved by a Unified Government Indemnified Party. The Unified Government Indemnified Party shall have the right, but not the obligation, to participate, at the Unified Government Indemnified Party's own cost and expense, in the defense thereof by counsel of the Unified Government Indemnified Party's choice. In the event that Developer shall fail timely to defend, contest or otherwise protect a Unified Government Indemnified Party against such Action, the Unified Government Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Unified Government Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest, or otherwise protect against such Action), the Unified Government Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer, and within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the Unified Government Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

C. A Unified Government Indemnified Party shall submit to Developer any settlement proposal that the Unified Government Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Unified Government Indemnified Party will unreasonably withhold its consent to a proposed settlement.

D. Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce the Unified Government to enter into this Agreement. To the fullest extent permitted by law, a Unified Government Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the Unified Government Indemnified Party in payment of the damages suffered by it, as is necessary to protect the Unified Government Indemnified Party from loss. If such court action is successful, the Unified Government Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement, or appeal of such action).

E. The right to indemnification set forth in this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

Section 8.02. Non-liability of Officials, Employees and Agents of the Unified Government.

No recourse shall be had for the reimbursement of the 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 Unified Government, 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.

Section 8.03. Power of the Unified Government. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the Unified Government to act in its capacity as a public body. Further, nothing herein shall relieve the Developer from complying with all Applicable Laws and Requirements.

Section 8.04. LBE/MBE/WBE Employment Opportunity Goals. Developer agrees to comply with the goals set forth on Exhibit I attached hereto and made a part hereof, in order to identify and provide employment opportunities for local businesses and contractors, women and local minority owned businesses in connection with the Project.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01. Developer Event of Default. Subject to **Section 9.05**, the occurrence and continuance of any of the following events shall constitute a "**Developer Event of Default**" hereunder:

A. Subsequent to opening for business, the Project shall fail to Continuously Operate (as defined in **Section 5.03**) on the Project Site.

B. Developer shall transfer the Project Site or this Agreement without complying with the terms and conditions of **Article VII** hereof, including without limitation, any required consent or approval of the Unified Government

C. 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 the Unified Government 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 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 promptly upon receipt of such notice diligently commence to remedy such default or breach (but in all events within such 30-day period) and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.02. Unified Government Event of Default. Except as further provided herein, and subject to **Section 9.05**, a "**Unified Government Event of Default**" shall mean a Default in the performance of any obligation or breach of any other covenant or agreement of the Unified Government 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 Unified Government 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 Unified Government is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Unified Government shall immediately upon receipt of such notice diligently commence to remedy such default or breach (but in all events within such 30-day period) 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 Unified Government shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Unified Government shall have the right to terminate this Agreement, in which event the Unified Government shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer and the Unified Government shall thereafter retain Real Property Tax Revenues.

2. The Unified Government may pursue any available remedy at law or in equity by suit, action, mandamus, or other proceeding to enforce and compel the specific 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 Unified Government under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Unified Government resulting from such Developer Event of Default, all subject to the Developer's right to terminate this Agreement at any time under Section 7.03(c) hereof, at which time the Parties shall have no further obligations hereunder.

B. If the Unified Government 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 Unified Government, then and in every case the Unified Government 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 Unified Government shall continue as though no such proceeding had been instituted.

C. The exercise by the Unified Government 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 Unified Government shall apply to obligations beyond those expressly waived.

D. Any delay by the Unified Government 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 Unified Government 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.

E. In the event of such default, the Unified Government may take such actions, or pursue such remedies, as exist hereunder, or at law or in equity, and Developer covenants to pay and to indemnify the Unified Government against all reasonable costs and charges, including attorney's fees, lawfully and reasonably incurred by or on behalf of the Unified Government in connection with the enforcement of such actions or remedies.

Section 9.04. Remedies Upon a Unified Government Event of Default.

A. Upon the occurrence and continuance of a Unified Government 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 this Agreement, at which time neither party shall have any further obligations hereunder.

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 Unified Government 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 Unified Government 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 Unified Government 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 Unified Government 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 Wyandotte 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 Unified Government and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions, and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably 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 Unified Government 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 Unified Government, without regard to whether the Unified Government has been, remains, or is an owner of any land or interest

therein in the Project or the Project Site. The Unified Government 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 Unified Government.

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 Unified Government 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. 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 Unified Government's governing body or of any branch of the Unified Government'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 Unified Government the nature of such interest and seek a determination with respect to such interest by the Unified Government and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. Developer warrants that it has not paid or given and will not pay or give any officer, employee, or agent of the Unified Government any money or other consideration for obtaining this Agreement. Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the Unified Government who exercises or has exercised any functions or responsibilities with respect to the 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 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 until the earlier to occur of: (i) Developer has received reimbursement from the UG for all Reimbursable Project Costs, subject to the Reimbursable Project Costs Cap; and (ii) the term of Real Property Tax Revenues reimbursement to Developer for all portions of the Project Site have expired, or (iii) the outside dates for reimbursement set forth in **Section 3.03(D)** hereof.

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 the 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 Unified Government of the occurrence of any material event which would cause any of the information furnished to the Unified Government 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 Unified Government 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 Unified Government or the Developer is required, or the Unified Government 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 Unified Government, unless otherwise provided herein, by the Unified Government Representative 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 Unified Government Representative may seek the advice, consent or approval of the Unified Government Commission before providing any supplemental agreement, request, demand, approval, notice, or consent for the Unified Government pursuant to this Section.

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

To the Unified Government:

Unified Government Clerk Municipal Building
701 North 7th Street
Kansas City, Kansas 66101

With a copy to:

Chief Counsel
Legal Department
Municipal Building
701 North 7th Street
Kansas City, Kansas 66101

To the Developer:

Boulevard Lofts, LP
Attn: Kelley Hrabe
770 East 5th Street
Kansas City, Missouri 64106

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 Wyandotte County, Kansas. This Agreement shall be promptly recorded by the Developer at Developer's cost after execution, and proof of recording shall be provided to the Unified Government.

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

UNIFIED GOVERNMENT OF WYANDOTTE
COUNTY/KANSAS CITY, KANSAS

By: _____

David Alvey

Mayor/CEO

(Seal)

ATTEST

By: _____

Unified Government Clerk

ACKNOWLEDGEMENT

STATE OF KANSAS)

) **ss.**

COUNTY OF WYANDOTTE)

BE IT REMEMBERED, that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David Alvey, Mayor/CEO of the Unified Government of Wyandotte County/Kansas City, Kansas, a municipal corporation organized and existing pursuant to the laws of the State of Kansas as a consolidated city-county having all the powers, functions and duties of a county and a city of the first class, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said Unified Government, and such person duly acknowledged the execution of the same to be the free act and deed of said Unified Government.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

[SEAL]

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

BOULEVARD LOFTS, LP, a Kansas limited partnership

By: BOULEVARD LOFTS GP, LLC, a Kansas limited liability company, its General Partner

By: _____
Kelley Hrabe, Manager

ACKNOWLEDGEMENT

STATE OF KANSAS)

) ss.

COUNTY OF WYANDOTTE)

BE IT REMEMBERED, that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kelley Hrabe, Manager of Boulevard Lofts GP, LLC, a limited liability company existing pursuant to the laws of the State of Kansas, the General Partner of Boulevard Lofts, LP, a limited partnership (the "Partnership") existing pursuant to the laws of the State of Kansas who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said Partnership, and such person duly acknowledged the execution of the same to be the free act and deed of said Partnership.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

LOT 1, BOULEVARD LOFTS, A SUBDIVISION IN KANSAS CITY, WYANDOTTE COUNTY, KANSAS.

EXHIBIT B

DEPICTION OF PROJECT SITE / CONCEPT PLAN

Poplar Fire
 Boulevard Loft
 1500 15th Street NW
 NW 1500 15th Street
 20150021



odimo
 4711 15th Street NW
 NW 1500 15th Street
 20150021

OWNER
 Allen Valley Homes, LLC
 1712 E. 28th Street
 NW 1500 15th Street
 20150021

ARCHITECT
 HKS Architecture
 1100 15th Street NW
 NW 1500 15th Street
 20150021

GENERAL CONTRACTOR
 HKS Construction
 1100 15th Street NW
 NW 1500 15th Street
 20150021

MECHANICAL ENGINEERING
 HKS Mechanical
 1100 15th Street NW
 NW 1500 15th Street
 20150021

ELECTRICAL ENGINEERING
 HKS Electrical
 1100 15th Street NW
 NW 1500 15th Street
 20150021

PLUMBING ENGINEERING
 HKS Plumbing
 1100 15th Street NW
 NW 1500 15th Street
 20150021

PAINT ENGINEERING
 HKS Paint
 1100 15th Street NW
 NW 1500 15th Street
 20150021

LANDSCAPE ARCHITECTURE
 HKS Landscape
 1100 15th Street NW
 NW 1500 15th Street
 20150021

INTERIOR ARCHITECTURE
 HKS Interior
 1100 15th Street NW
 NW 1500 15th Street
 20150021

MARKETING
 HKS Marketing
 1100 15th Street NW
 NW 1500 15th Street
 20150021

LEGAL
 HKS Legal
 1100 15th Street NW
 NW 1500 15th Street
 20150021

CONSTRUCTION MANAGEMENT
 HKS Construction Management
 1100 15th Street NW
 NW 1500 15th Street
 20150021

INSURANCE
 HKS Insurance
 1100 15th Street NW
 NW 1500 15th Street
 20150021

FINANCIAL
 HKS Financial
 1100 15th Street NW
 NW 1500 15th Street
 20150021

OPERATIONS
 HKS Operations
 1100 15th Street NW
 NW 1500 15th Street
 20150021

MAINTENANCE
 HKS Maintenance
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 NW 1500 15th Street
 20150021

REPAIRS
 HKS Repairs
 1100 15th Street NW
 NW 1500 15th Street
 20150021

RENOVATIONS
 HKS Renovations
 1100 15th Street NW
 NW 1500 15th Street
 20150021

RESTORATION
 HKS Restoration
 1100 15th Street NW
 NW 1500 15th Street
 20150021

DEMOLITION
 HKS Demolition
 1100 15th Street NW
 NW 1500 15th Street
 20150021

CONSTRUCTION
 HKS Construction
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OPERATIONS
 HKS Operations
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MAINTENANCE
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RESTORATION
 HKS Restoration
 1100 15th Street NW
 NW 1500 15th Street
 20150021

DEMOLITION
 HKS Demolition
 1100 15th Street NW
 NW 1500 15th Street
 20150021

LEGEND

6" STANDARD DUTY ASPHALT
 8" HEAVY DUTY ASPHALT
 4" CONCRETE
 4" CONCRETE SECONDARY PAVT

PROVIDED ZONING (R-5) (STREET)

VARIANCE FOR BUILDING AND PARKING SETBACK TO 0'

36-PLEX UNITS	802	18
24-1 BED	432	8
4-2 BED	8	0
TOTAL REQUIRED	1242	26
TOTAL PROVIDED	1242	23

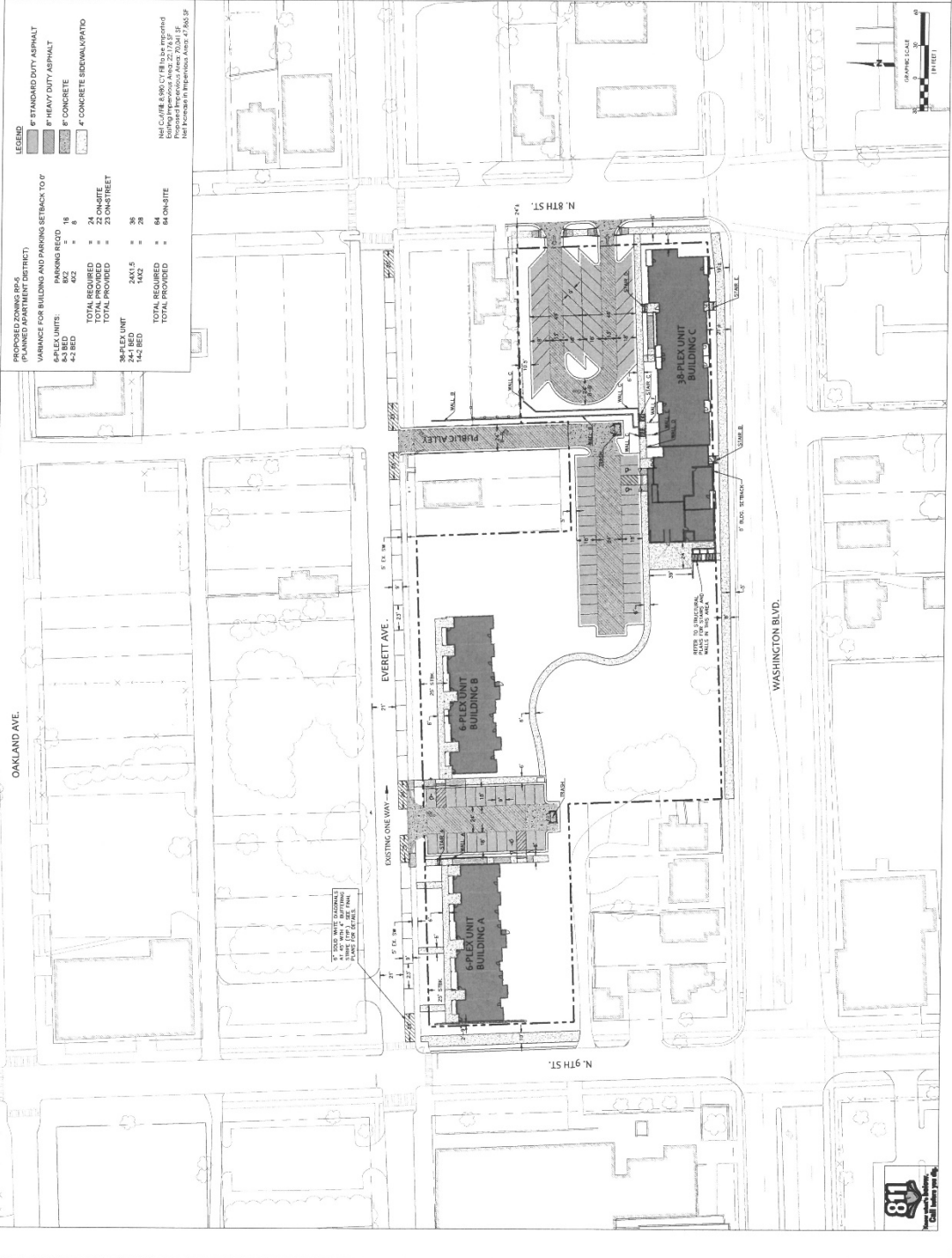
36-PLEX UNIT

24x15	36
14x2	142
TOTAL PROVIDED	180

4-2 BED

84	CONCRETE
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NOT TO SCALE & NOT TO BE REPRODUCED WITHOUT PERMISSION OF THE ARCHITECT
 Projected to be provided in the future
 Not to be used in the future. Area: 47,562 SF



AS	ASLT	ASLT	ASLT	ASLT	ASLT
ASLT	ASLT	ASLT	ASLT	ASLT	ASLT

SITE PLAN
 C200



EXHIBIT C

FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS

CERTIFICATE OF REIMBURSABLE PROJECT COSTS

TO: Unified Government of Wyandotte County/Kansas City, Kansas
Attention: County Administrator

RE: Boulevard Lofts Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement between the Unified Government and the Developer, dated _____, 2019.

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

1. Each item listed on Schedule 1 hereto is a Reimbursable Project Cost and was incurred in connection with the construction of the Project.
2. These Project Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on Schedule 1 has not previously been paid or reimbursed from Real Property Tax Revenues, and no part thereof has been included in any other certificate previously filed with the Unified Government.
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. 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.

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

Dated this _____ day of _____, 2019.

BOULEVARD LOFTS, LP, a Kansas limited partnership

By: BOULEVARD LOFTS GP, LLC, a Kansas limited liability company, its General Partner

By: _____
Kelley Hrabe, Manager

Approved for Payment this _____ day of _____, 2019.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

By: _____

Title: _____

SCHEDULE 1
TO
CERTIFICATE OF REIMBURSABLE PROJECT COSTS

Description of Project Costs:

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*Pursuant to **Section 4.07** of the Agreement, the Unified Government shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in this Certificate.*

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Boulevard Lofts, LP, a Kansas limited partnership (the "Developer"), pursuant to that certain Development Agreement for the Boulevard Lofts Project dated as of _____, 2019, between the Unified Government of Wyandotte County/Kansas City, Kansas (the "Unified Government") and the Developer (the "Agreement"), hereby certifies to the Unified Government as follows:

1. That as of _____, 20__, the construction, renovation, repairing, equipping and constructing of the Project (as such term is defined in the Agreement) has been substantially 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 Project have been obtained, or, to the extent that a good faith dispute exists with respect to the payment of any construction cost with respect to the Project, Developer has provided the Unified Government with a bond or other security reasonably acceptable to the Unified Government.
4. This Certificate of Substantial Completion is accompanied by (a) 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 Project has been substantially completed in accordance with the Agreement; and (b) a copy of the Certificate(s) of Occupancy issued by the Unified Government Building Official with respect to each building to be constructed within the Project.
5. This Certificate of Substantial Completion is being issued by the Developer to the Unified Government in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to the Project.
6. The Unified Government's acceptance and the recordation of this Certificate with the Wyandotte County Register of Deeds shall evidence the satisfaction of the Developer's obligations to construct this phase of the Project.

This Certificate shall be recorded in the office of the Wyandotte County Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date heretofor 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__.

BOULEVARD LOFTS, LP, a Kansas limited partnership

By: BOULEVARD LOFTS GP, LLC, a Kansas limited liability company, its General Partner

By: _____
Kelley Hrabe, Manager

ACCEPTED:

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT E

PROJECT BUDGET

BOULEVARD LOFTS BUDGET

Land and Building Acquisition	\$ 149,200	1.4%
Construction "Hard" Costs	\$ 7,668,750	72.1%
Developer Fee	\$ 800,000	7.5%
Developer Overhead	\$ 100,000	
Soft Costs	\$ 1,686,532	15.9%
Reserves	\$ 227,000	2.1%
TOTAL USES OF FUNDS	<u>\$ 10,631,482</u>	<u>100.0%</u>

EXHIBIT F

REIMBURSABLE PROJECT COSTS

Item	Amount	Comment
Acquisition	\$150,000.00	Property Developer had to acquire to meet code requirements
Public alley improvements	\$20,000.00	Improvements to the public alley off of Everett Ave.
Right of Way improvements	\$20,000.00	Landscaping, curbs, lights, etc.
Everett Ave. clean-up	\$10,000.00	Clean up on the existing land bank properties
Total	\$200,000.00	

EXHIBIT G
DESIGN STANDARDS

1. Compliance with the City-wide master plans.
2. Compliance with the design criteria and material board approved by the Director of Planning.

EXHIBIT H

RESTRICTED LAND USES WITHIN THE PROJECT SITE

1. Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Project (except that this provision shall not prohibit normal cooking odors which are associated with a first-class restaurant operation);
2. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
3. Any "second hand" store" or "surplus" store, thrift shop or other business principally engaged in the sale of used merchandise;
4. Any mobile home park, trailer court, labor camp, junkyard or stockyards (except that this provision shall not prohibit);
5. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
6. Any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
7. Any central laundry, central dry-cleaning plant or laundromat (except that this provision shall not prohibit nominal supportive facilities for on-site services oriented to pickup and delivery by the ultimate consumer as the same may be found in first-class shopping centers);
8. (Reserved)
9. Any bowling alley or skating rink;
10. Any movie theater, night club or live performance theater;
11. Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit pet shops or pet supply superstores and veterinary services which are incidental thereto);
12. Any mortuary, funeral home or crematory;
13. Any adult book store, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia (except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public [as opposed to specific segment thereof]);
14. Any bar or tavern without a full-service kitchen.
15. Any flea market, amusement or video arcade, pool or billiard hall, car wash, tattoo parlor or dance hall (except that this provision shall not prohibit a restaurant from including video games as an incidental use to its operations);
16. With respect to spaces over 5,500 square feet, any training or educational facility, including, but not limited to, beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers (except that this provision shall not prohibit on-site employee training [whether for employment at the Project or at another business location of such occupant] by an occupant incidental to the conduct of its business at the Project);
17. Any church, school, day care center or related religious or educational facility or religious reading room;

18. Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club or athletic facility); and
19. Any casino or other gambling facility or operation, including but not limited to, off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls (except that this provision shall not prohibit government sponsored gambling activities or charitable gambling activities if such activities are incidental to the business operation being conducted by the occupant)

EXHIBIT I

LBE/WBE/MBE PARTICIPATION AND EMPLOYMENT OPPORTUNITY AGREEMENT

This Exhibit sets forth the guidelines for the utilization of local business, minority, and women enterprises and local resident, minority, and women participation and equal employment opportunity referenced in **Section 8.2** of the Boulevard Lofts Development Agreement (the "**Agreement**") between the Unified Government of Wyandotte County/Kansas City, Kansas (the "**UG**") and Boulevard Lofts, LP, a Kansas limited partnership (the "**Developer**"). The parties agree as follows:

I. SCOPE

These procedures are applicable to the Construction of the Project, including but not limited to all aspects of the construction of the Improvements and all related facilities, including labor, materials and supplies, and construction-related services, but not including: (i) Specialized Services; or (ii) legal, architectural and pre-construction consulting services already performed or contracted for prior to the Effective Date of the Agreement (as defined therein), which shall specifically be excluded from both the numerator and the denominator in determining whether the Construction goals set forth herein have been met.

II. DEFINITIONS

All capitalized terms used in this Exhibit shall have the meaning ascribed to them in the Agreement and made a part thereof, or as otherwise set forth herein.

A. "Best Efforts" has the meaning set forth in Section III.C.3.b. herein.

B. "Construction" means all aspects of the construction of the Improvements, all related facilities, and the Project, including labor, materials and supplies, and construction-related services, whether performed or contracted for by or on behalf of Developer; provided, however, "Construction" shall not include: (i) services performed or associated with tenant improvements or any services requested by tenants of the Project, provided that this exception shall only apply to tenants who are third parties unaffiliated with Developer; (ii) Specialized Services; (iii) Professional Services; or (iv) legal, architectural and pre-construction consulting services already performed or contracted for prior to the Effective Date of the Agreement.

C. "Contractor" means the Proposer selected by Developer for the design, development, or construction of the Project.

D. "Local Business Enterprise or LBE" means a business headquartered or which maintains a major branch that performs the significant functions of the business in Wyandotte County or a business of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and whose day-to-day management is under the control of an individual residing in Wyandotte County. There is no formal certification process for LBE designation. It is determined and assigned based on the criteria referenced in this definition and payment of all applicable Wyandotte County taxes and/or licensing fees.

E. "Local Resident" means an individual that, during his or her employment with the Project, maintains his or her place of domicile in Wyandotte County.

F. "Minority Business Enterprise or MBE" means a business of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and/or whose day-to-day management is under the control of a person who is a member of an American ethnic minority group including African-American, Asian-Indian, Asian-Pacific, Hispanic and Native American.

G. "Professional Services" means advisory or consulting activities including, but not limited to, architectural, engineering, legal, accounting, financial, marketing, environmental studies, and financial services contracted for by or on behalf of Developer for the design, development, and construction of the Project but specifically excluding: (i) professional services that have historically been sourced and performed at the holding company level by Developer (such as legal and accounting services, for example); (ii) Specialized Services; (iii) Construction; and (iv) legal, architectural and pre-construction consulting services already performed or contracted for prior to the Effective Date of the Agreement.

H. "Proposer" means a person who submits a proposal in response to a solicitation for proposals issued by Developer or one of its Contractors with respect to the design, development, or construction of the Project, or with respect to ongoing maintenance and operations of the Project.

I. "Specialized Services" means expertise, services, or products, the application of which are unique to the construction of the Project and which are only available through sole or limited source providers or national vendors. Specialized Services shall also include the services provided by the Contractors and designers who have been involved with and have previous experience on similar projects with Developer and which Developer has engaged or intends to engage to perform similar services for the Project.

K. "Women Business Enterprise or WBE" means a business of which at least 51% of the stock, equity, or beneficial interest is owned, held, or controlled and/or whose day-to-day management is under the control of one or more women who are U.S. citizens or legal resident aliens.

III. DESIGN, DEVELOPMENT, AND CONSTRUCTION OF THE PROJECT

A. GOALS FOR LBE/MBE/WBE PARTICIPATION.

1. Project Design, Development, and Construction Goals.

Developer will use its Best Efforts to meet the following goals based upon the total cost of Construction of the Project and all related facilities undertaken by Developer, but not including Specialized Services. In no event shall Developer be required to incur higher costs as a result of its commitment to attempt to meet such goals. In the event Developer obtains bids for any aspect of the Project for which a bid by a Proposer qualifying as an LBE, MBE, or WBE is not the lowest or best bid, Developer shall not be required to meet the LBE/MBE/WBE participation percentage goals for that aspect of the Project. These goals are based upon a disparity study performed for the Kansas City Metropolitan Area for LBE, MBE, and WBE participation. These goals are not to act as quotas or set asides.

	Construction
LBE	5%
MBE	5%
WBE	5%

It is the intent of the UG to give preference to the utilization of LBEs so long as all other factors relating to the award of an individual contract are equal. If the factors relating to an award of an individual contract are equal, Developer shall give preference to the utilization of LBEs over the utilization of MBEs and WBEs. The Developer shall strive to meet each individual goal listed.

2. Contract Specific Goals.

The parties agree that the goals are set forth for Construction of the Project as a whole, excluding Specialized Services, and the UG will reasonably agree to different specific goals for specific contracts or portions of contracts to be awarded by Developer, when proposed by the Developer, relating to the Construction of the Project, based upon the availability of qualified LBEs and certified MBEs and WBEs to perform the specific scopes of work delineated in Developer's Project Utilization Plan (as described herein).

3. Eligibility for Credit.

a. Only LBE businesses that are qualified and/or MBE or WBE businesses that are certified or undergoing certification at the time of submittal of the subject bid or proposal and ultimately certified as MBEs or WBEs by the Kansas Department of Commerce, State of Missouri, Missouri Department of Transportation, City of Kansas City, Missouri, MidAmerica Minority Business Development Council, Women's Business Enterprise National Council, or any other public or private entity reasonably acceptable to the UG and the Developer (each an "approved" business), may be counted towards the participation goals in Section III.A.1. above.

b. In the event that a contract has been awarded on the Project to an approved LBE/MBE/WBE business, and such LBE/MBE/WBE business later becomes unapproved prior to the completion and acceptance of all the work to be provided under such contract, then Developer shall nonetheless receive credit towards the goal for that the entire portion of work performed or services provided up to the point such business becomes unapproved.

4. Construction Workforce.

a. Recruitment and outreach. Developer will use its Best Efforts to employ and to ensure its Contractors employ Local Residents, minorities, and women in all aspects of the Construction of the Project except for Specialized Services. These efforts shall include but not be limited to:

i. advertising in appropriate publications describing the work available, pay scales, and application procedures and maintaining a log or copies of these ads showing the date of publication and identifying the publication;

ii. working with local community organizations, minority and women's community organizations, and other appropriate organizations to seek qualified Local Residents, minorities, and women (a list of these organizations may be provided by the UG upon request); and

iii. working with the UG to promote diversity and inclusion in all aspects of the Project.

Documentation of these and any other steps taken shall be submitted to the UG prior to the beginning of the bidding process.

b. Employment Procedures. Developer and its Contractors shall implement equal employment opportunity hiring and job action procedures as those terms are commonly understood.

B. DEVELOPMENT AND PROJECT UTILIZATION PLANS.

1. Submissions, Content, and Fulfillment of Project Utilization Plan.

a. Fourteen (14) calendar days before the solicitation of the first proposal for the Construction of part of the Project, which is issued by Developer after the execution of the Agreement, Developer will submit a Project Utilization Plan to the UG for review and approval. The Project Utilization Plan shall be on the form attached to this Exhibit as Attachment A or on another form provided or approved by the UG. This Project Utilization Plan shall set forth, to the best of Developer's knowledge: all categories of work that will be covered within solicitations that Developer or its Contractors intend to issue for all Construction providers necessary for the construction of the Project; an estimate of the dollar value of all work covered by these solicitations; an estimate of the dollar value of work within each identified work category; the dollar value of the work for each identified work category that is projected to be performed by LBEs, MBEs and WBEs; any known potential joint ventures with LBEs, MBEs, and WBEs within each identified work category; an overall schedule of all work projected to be performed related to the design, development, and construction of the Project, laid out sequentially over time; and the actions Developer intends to take, with respect to each of these solicitations, to make its Best Efforts to meet the goals set forth in Section III.A.1. of this Exhibit.

b. Developer, in the Project Utilization Plan, shall designate one person as the Project Manager to serve as the point of contact with the UG on all matters related to the Project Utilization Plan. Developer shall provide the Project Manager's name, physical office address, e-mail address, and phone number to the UG. The Project Manager shall be an individual with administrative authority with regard to enforcement of the stipulations located within this Exhibit.

c. The goals of Section III.A.1 may be met by the expenditure of dollars with approved LBE/MBE/WBE prime Contractors, material suppliers (either by Developer or a prime Contractor), subcontractors (either by Developer or a prime Contractor), or through joint ventures with approved LBEs, MBEs or WBEs.

i. Certified MBE and WBE prime Contractor Proposers may count their own participation toward a goal for which they qualify, and may divide their own participation between two goals, but their participation may not be double-counted. These prime Contractor Proposers shall receive credit towards the goals for the dollar value of the contract.

ii. Approved or certified LBE/MBE/WBE material suppliers, regular dealers, and manufacturers shall be credited towards the goals for the dollar value of the contract.

iii. A joint venture involving an approved LBE/MBE/WBE as a partner may be counted towards the applicable goal only to the extent of the dollar amount that the approved LBE/MBE/WBE is responsible for and at risk, except, however, if the LBE/MBE/WBE is the majority partner in the joint venture, the entire joint venture contract amount shall be counted, less any work subcontracted to the non-LBE/MBE/WBE joint venture partner. To receive credit, the approved LBE/MBE/WBE must be responsible for a clearly defined portion of the work, profits, risks, assets, and liabilities of the joint venture.

iv. Participation by a certified MBE owned by a minority woman may be counted as MBE participation or as WBE participation; however, this participation cannot be double-counted. A certified MBE or WBE may also be counted towards the LBE goal, if qualified as LBE. The amount of participation by these businesses may be divided between the MBE or the WBE goals. A qualified LBE that is certified as MBE and WBE shall be counted toward the LBE and the MBE or WBE goals, but shall not be counted toward both the MBE and WBE goals.

v. Only the participation of LBEs, MBEs, and WBEs that provide a commercially useful function required for the work of the specific solicitation shall be counted toward achievement of the goals. The LBE/MBE/WBE must be responsible for the execution of a distinct element of the work by actually performing, managing, or supervising its function in the work identified in the solicitation. Brokering is not credited. Purchases from LBEs, MBEs, and WBEs that constitute indirect or general overhead costs to a projected Proposer's business may not be counted toward the goals. Costs directly incurred solely to perform the work with respect to a Project contract may be counted toward the goals.

2. Evaluation of Project Utilization Plans.

a. The UG will review Developer's Project Utilization Plan respecting each category of work identified by Developer. In conducting its review, the UG shall evaluate the extent to which the actions Developer proposes to take to meet the goals constitute Best Efforts, as set forth in Section III.C.3.b. below. In no event shall Developer or any of its Contractors be required to engage any LBE/MBE/WBE that is not the low bidder or is not qualified or capable of performing the work to acceptable standards in the reasonable discretion of Developer.

b. Changes to the Project Utilization Plan after its initial submission to the UG shall be reviewed and approved or rejected by the UG within thirty (30) days following submission of the same by Developer, and such changes shall be deemed to be approved by the UG if not rejected within such thirty (30) day period.

C. CONTRACT AWARD COMPLIANCE PROCEDURES.

1. Solicitation Documents.

The solicitation documents for each contract for which goals are established shall contain a description of the requirements set forth in this Exhibit; the LBE/MBE/WBE goals; and the areas of projected subcontracting. Five (5) calendar days before the issuance of each solicitation, Developer shall submit the solicitation documents and the bid list to the UG. This submittal is mandatory for each bid subject to LBE/MBE/WBE goals.

2. Developer's Report of Solicitation Results.

Within seven (7) working days after the date set for receipt of proposals by each solicitation issued for Developer for the construction of the Project, the Project Manager shall submit to the UG, on a form provided or approved by the UG, a Report of Solicitation Results (the "Report") fully describing all proposals received in response to the solicitation. The Report shall: (1) state the estimated total dollar value of the work covered by the solicitation; (2) state the names of all Proposers; (3) state the total dollar value of work covered by proposals submitted by approved LBEs, MBEs, and/or WBEs (4) provide all relevant information concerning each joint venture Proposer; and (5) state the name of all subcontractors to Proposers (to the extent then available) that are approved LBEs, MBEs, and/or WBEs, and the dollar value of work covered by proposed subcontracts between Proposers and LBEs, MBEs and/or WBEs. The Report shall also indicate to which of the Proposers, including joint venture Proposers, the Developer or any of its Contractors is intending to award contracts resulting from the solicitation. In addition, with respect to any LBE/MBE/WBE goal established in the Project Utilization Plan that it appears from the proposals received will not be met, Developer shall include in the Report a precise description of all Best Efforts it has undertaken or caused to be undertaken to meet the established goals. These submittals are mandatory for all solicitations subject to LBE/MBE/WBE goals.

3. UG Review of Developer's Report of Solicitation Results.

a. Within seven (7) calendar days of receiving a Report for review, the UG, based on its review of the Report, shall advise Developer whether it appears that, in light of Developer's indication of the Proposers to whom it intends to award contracts, Developer will meet the goals set forth in the Project Utilization Plan or if not, whether Developer has established Best Efforts to meet these goals, and shall state the reasons for this conclusion, referring to the specific Best Efforts criteria contained in Section III.C.3.b. below. As a part of its review, the UG may

ascertain whether LBE/MBE/WBE subcontractors agree with the dollar value of the work and the scope of the work, as identified in the proposal.

b. For each Project Utilization Plan goal that is not achieved, Developer shall be deemed to have used “**Best Efforts**” to meet the Project Utilization Plan goals for construction set forth in Section III.A.1. of this Exhibit if Developer shall have taken substantially all the following actions:

i. Developer is seeking or has sought timely assistance of the UG to identify qualified LBEs, MBEs, and WBEs;

ii. Developer is advertising or has advertised contract opportunities in local, minority, and women media;

iii. Developer is providing or has provided reasonable written notice of opportunities and informational meetings to approved LBEs, MBEs, and WBEs;

iv. Developer is following up or has followed up initial solicitations of interest by contacting LBEs, MBEs, and WBEs;

v. Developer is segmenting or has segmented portions of the work to increase the likelihood of LBE/MBE/WBE participation, where feasible;

vi. Developer is providing or has provided interested LBEs, MBEs, and WBEs with timely and accurate information about the plans, specifications, requirements, deadlines, and bidding procedures of the contracts;

vii. Developer is negotiating or has negotiated in good faith with interested LBEs, MBEs, and WBEs, not rejecting them as unqualified without sound reasons, based on a thorough review of their capabilities and prior work histories;

viii. If applicable, Developer is seeking or has sought to educate and assist LBEs, MBEs, and WBEs in obtaining bonding, lines of credit, or insurance required to perform the contract; and

ix. Developer is working or has worked with local, minority, and women contracting, professional, civic, and community organizations, government

officers, or any other organization or persons, as identified by the UG, that provide assistance in the recruitment of LBEs, MBEs and WBEs.

Failure by the Developer to take all of the foregoing actions shall not be determinative that Developer has not used its Best Efforts.

4. Signed Contracts.

Within twenty-one (21) working days of provision of the UG's evaluation of the Report to Developer, the Project Manager shall submit signed contracts with successful Proposers to the UG.

D. SUBCONTRACTOR RELATIONS.

1. Documentation of Subcontracting Agreements.

All subcontracting services shall be evidenced by a written agreement stating, at a minimum, the scope of work to be performed and the amount to be paid for performance of the work. Unit price subcontracts are acceptable if appropriate to the type of work being performed.

2. Documentation of Schedules.

a. For Construction contracts, the Contractor must present a work schedule that includes when the LBE/MBE/WBE subcontractors will be utilized at the job site. This schedule is due on or before the pre-construction meeting with the UG and the Project Manager representing Developer.

3. Substitutions, Additions, or Deletions.

Where a substitution for a LBE/MBE/WBE subcontractor must occur after submission of proposals by the Project Manager to the UG, the Project Manager must submit the proposed change or substitution to the UG for review. The UG shall have no authority to approve or reject any change or substitution. The sole purpose of the review by the UG shall be to determine whether the LBE/MBE/WBE should be counted toward achievement of the goals of Section III.A.1.

IV. UG'S ASSISTANCE TO DEVELOPER

The UG shall use its best efforts to provide assistance to Developer in fulfilling its obligations as set forth in this Exhibit. Developer assumes all responsibility for its Best Efforts in meeting the goals and

complying with the procedures and processes set forth herein. The UG assumes no duty or responsibility to the Developer with respect to Developer's fulfillment of the goals set forth in this Exhibit by reason of the provision of assistance to Developer. Examples of assistance the UG may provide include but are not limited to:

- A.** providing information and technical assistance regarding the Project to Developer and its agents, including Contractors, subcontractors, LBEs, MBEs, WBEs, officials, and other interested persons;
- B.** developing and maintaining a registry of approved LBE/MBE/WBE businesses;
- C.** assisting with identifying potential LBEs, MBEs, and WBEs and reviewing their qualifications to participate in the Project;
- D.** updating Developer and its agents on current or proposed affirmative action legislation that may affect the Project;
- E.** recommending contract specific goals, as appropriate;
- F.** providing assistance in pre-award activities, such as provision of model or example Project Utilization Plans and work segmentation;
- G.** reviewing Developer, Contractor, and subcontractor performance and LBE/MBE/WBE participation on the Project;
- H.** providing advice relative to utilization and compliance matters;
- I.** conducting compliance reviews and audits of LBE/MBE/WBE participation;
- J.** evaluating requests for substitutions, additions, and deletions;
- K.** assisting Developer and its agents in addressing issues related to the goals and procedures set forth in this Exhibit;
- L.** reviewing payments to subcontractors, as documented by monthly reports submitted by Developer;

M. reviewing complaints from LBEs, MBEs WBEs, Contractors, subcontractors, and any other interested persons regarding these goals and procedures;

N. assisting in Developer's development of forms to document compliance with these procedures; and

O. reviewing and approving utilization plans and contract award submittals.

V. **DEVELOPER COMPLIANCE RECORDS AND REPORTS.**

A. **RECORDS.**

Developer shall maintain those records as may reasonably be required to demonstrate compliance with (and/or its Best Efforts to comply with) the goals and procedures set forth in this Exhibit. These records shall be available to the UG upon reasonable notice.

B. **DEVELOPMENT AND PROJECT UTILIZATION PLAN REPORTS.**

Developer shall update the Project Utilization Plan quarterly on the forms attached hereto as Attachments B and C or another form provided or approved by the UG and shall include information requested thereon. In addition, each quarterly report shall include the following for each LBE, MBE or WBE whose participation is utilized by Developer to be applied to the goals set forth herein: business name and address of each LBE, MBE and WBE and a brief description of the work to be performed by each. Developer also shall document the change orders to contracts awarded in each quarterly report.

C. **REMEDIES.**

If Developer should fail to provide a Report required by this Exhibit, and fail to cure such failure within thirty (30) days after receipt of written notice from the UG specifying such failure, then such failure to cure shall constitute an event of default and the UG shall have those remedies set forth in Section 9 of the Agreement. In addition, the UG shall have the right to stop processing reimbursement requests until Developer complies with reporting requirements.

If, after reviewing Developer's Reports, the UG believes that the participation goals contained in this Exhibit have not been met, and that the Best Efforts described herein have not been met, then the UG

shall inform Developer of this determination in writing. If, within thirty (30) days following its receipt of said written determination from the UG, Developer fails to demonstrate to the UG's reasonable satisfaction that either: (i) the goals contained in this Exhibit have been met; or (ii) the goals contained in this Exhibit may not have been met but the Best Efforts described herein have been met, then the UG shall have the right to reduce the Reimbursable Project Cap Costs to One Hundred Fifty Thousand Dollars and NO/100 (\$150,000.00) as the UG's sole and exclusive remedy for such failure. The UG shall also have the right to renegotiate LBE, MBE, and WBE goals for future construction projects.

**UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY,
KANSAS**

BOULEVARD LOFTS, LP

By: _____

Douglas G. Bach

County Administrator

Date: _____, 2019

By: _____

Name: _____

Title: _____

Date: _____, 2019

Attachment A

Unified Government

Date: _____

Project Utilization Plan

Project Name: _____

Bid Package	Estimated Contract Value	Estimated LBE Value	Estimated LBE %	Estimated MBE Value	Estimated MBE %	Estimated WBE Value	Estimated WBE %	Total Combined Value	Total Combined %

DIVERSITY TOTAL	0			0	#DIV/0!	0	#REF!		

Attachment B

LBE/MBE/WBE Utilization Report

LBE/MBE/WBE - UTILIZATION REPORT										Month, Year	
CONSTRUCTION											
APPLICABLE TRADES					Cost		Actual				
					Total by Classification		0.00%	LBE	0.00%		
							0.00%	MBE	0.00%		
							0.00%	WBE	0.00%		
Discipline	Subcontractor/Supplier Name	Original Contract Value	Change In Contract Value	Total Contract (Excluding CCIIP)	LBE		MBE		WBE		Certifying Agency or Local Zip Code
					\$	%	\$	%	\$	%	
Bid Package #1											
Bid Package #2											
Bid Package #3											
Bid Package #4											
Bid Package #5											
Total Applicable Contract Volume Awarded To Date											
					\$	%	\$	%	\$	%	
					TOTAL - LBE		TOTAL - MBE		TOTAL - WBE		

Exhibit L - 61

Attachment C

LBE/MBE/WBE COMPLIANCE

SUMMARY REPORT

EXPENDITURES FOR REPORTING PERIOD

GOODS SUPPLIES and OTHER SERVICES	Total	Class	Percent	Comments
Total \$ Awarded				
Total \$ Expended				
Total \$ MBE		% MBE		
Total \$ WBE		%WBE		
Total \$ M/WBE		%M/WBE		

MINORITY AND WOMEN EMPLOYEES

List the name, address, trade, classification, date hired, sex and ethnic origin for each minority/women employed by your company.

Name & Address	Trade	Classification	Date Hired	Sex	Ethnic Origin

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EXHIBIT J

TABLE OF KHRC-APPROVED RENTS AND INVESTOR-APPROVED RENTS FOR TAX YEARS 2020 THROUGH 2030

	Inflation	Tax Year 2020	Tax Year 2021	Tax Year 2022	Tax Year 2023	Tax Year 2024
KHRC- approved rents	2%	Partial	\$453,660.00	\$462,733.20	\$471,987.86	\$481,427.62
Investor- approved rents	2%	Partial	\$442,380.00	\$451,227.60	\$460,252.15	\$469,457.20

	Tax Year 2025	Tax Year 2026	Tax Year 2027	Tax Year 2028	Tax Year 2029	Tax Year 2030
KHRC- approved rents	\$491,056.17	\$500,877.30	\$510,894.84	\$521,112.74	\$531,534.99	\$542,165.69
Investor- approved rents	\$478,457.20	\$488,423.27	\$498,191.73	\$508,155.57	\$518,318.68	\$528,685.05