



**CITY OF LEAWOOD  
GOVERNING BODY  
MEETING AGENDA**

Council Chamber  
4800 Town Center Drive  
Leawood, KS 66211

**GOVERNING BODY  
WORK SESSION**

**Monday, October 5, 2020  
6:00 P.M.**

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

**Mayor Peggy Dunn**

**Councilmembers**

**Ward One**

Debra Filla  
Andrew Osman

**Ward Two**

Jim Rawlings  
Mary Larson

**Ward Three**

Chuck Sipple  
Lisa Harrison

**Ward Four**

Julie Cain  
James Azeltine

**Review CID Policy in Response to Developer’s Request**

To reduce the likelihood of the spread of COVID-19 the Leawood Governing Body Work Session is being conducted remotely using the Zoom media format and some of the members of the Governing Body may appear remotely. Public comments will not be accepted during this meeting. City Hall is closed to public access during this meeting, however, the meeting will be livestreamed on YouTube and the public can access the livestream by clicking on [www.leawood.org](http://www.leawood.org).

**ADJOURN**

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

Regular meetings of the Leawood City Council are held the first and third Mondays of each month beginning at 7:30 PM. Copies of the agenda are available at the Office of the City Clerk on the Friday prior to the meeting. Leawood operates under a Council/Mayor form of government, with a separately elected mayor and 8 council persons. Council members are elected on a non-partisan basis from 4 wards. The Council develops policies and provides direction for the professional city administration.

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at 913.339.6700 or at [CityClerk@leawood.org](mailto:CityClerk@leawood.org) no later than 96 hours prior to the scheduled commencement of the meeting.

RESOLUTION NO. 4570

**RESOLUTION AMENDING THE CITY OF LEAWOOD'S COMMUNITY IMPROVEMENT DISTRICT ["CID"] POLICY AND REPEALING RESOLUTION NO. 3930.**

**WHEREAS**, the Kansas Community Improvement District Act, K.S.A. 12-6a26 et seq. [the "Act"] authorizes the governing body of any city to create community improvement districts ("Improvement Districts" or "CIDs") to enable public financing of all or a portion of certain projects or infrastructure improvements in order to encourage and promote economic development, tourism and community investment within a CID; and

**WHEREAS**, the Act further authorizes governing bodies, in order to pay the costs of such Projects (as defined herein), to impose a sales tax over and above the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, and amendments thereto, on the selling of tangible personal property at retail or rendering or furnishing services within Improvement Districts in any increment of .10% or .25%, not to exceed 2.0%, to levy special assessments upon property within such Improvement Districts, to issue special and or general obligation revenue bonds payable from such CID sales taxes and/or special assessments, or to reimburse the cost of the Project pursuant to Pay-As-You-Go financing (collectively, "CID Financing").

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

**Section 1. Objectives.**

The primary objective of this policy is to establish CID guidelines to enable public financing of all or a portion of a Project. A Project should provide a benefit to the public,

strengthen economic development, reduce blight, or upgrade older real estate through exterior redevelopment or rehabilitation. Public financing may be achieved by levying and collecting a sales tax in any increment of .10% or .25%, not to exceed 1.0% ("CID Sales Tax").

## **Section 2. Scope.**

This policy will apply when an owner or developer of land ("Petitioner") submits a proper petition ("CID Petition") and application to create a CID and/or utilize CID financing to fund approved Projects. The authority and decision to approve a CID Petition is within the sole discretion of the Governing Body. This policy is intended to provide guidelines only, and the Governing Body reserves its right to deviate from this Policy when it deems it to be in the best interest of the City.

The City of Leawood may consider establishment of CIDs, when the Governing Body deems it appropriate for certain Projects. In such case, Projects shall be financed by a CID Sales Tax on the sale of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas Retailers' Sales Tax Act, and amendments thereto, within the CID. The City, in accordance with the Act and in addition to and notwithstanding any limitations on the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, may, at its sole discretion, levy a CID Sales Tax within the CID area, all of which may be pledged for pay-as-you-go financing of the verified costs of approved Projects.

## **Section 3. Definitions.**

"Cost" means the definition set out in K.S.A. 12-6a27(f) as amended except as further set forth in this policy. The term Cost does not include: (a) costs incurred prior to CID establishment, (b) a developer's attorney's fees, financial advisor fees, real estate commissions, developer fees and fees paid to consultants representing developers, and (c) interest costs. The

term “Cost” may include engineering and architectural fees, environmental and geotechnical consultant fees and other similar due diligence expenses associated with a Project. Costs approved for reimbursement associated with an established CID must be as approved by the Governing Body in a development agreement entered into by and between the Petitioners and the City.

“Pay-As-You-Go” means a method of financing in which the costs of a Project are financed without notes or bonds, and the approved and verified costs of a Project are reimbursed after Project completion or completion of a phase of the Project as monies are deposited in the CID Fund (defined herein), all as approved by the Governing Body in an agreement between the Petitioner and the City [Development Agreement].

“Project” may include projects deemed eligible under this policy and that are otherwise eligible under the Act. The City reserves the right to exclude otherwise eligible Projects under the Act; determine eligible and ineligible projects, and determine the amount of funding for a Project on a case by case basis.

#### **Section 4. Criteria.**

The Governing Body may consider establishment of a CID when it determines it is in the City’s best interest and provided that it meets one or more of the following criteria:

1. The Project would attract and promote mixed use development.
2. The CID area has unique site constraints making development more difficult and costly.
3. The Project would substantially promote economic development.
4. The Project would incorporate higher standards for the design and construction of improvements than the minimum requirements under the Leawood Development Ordinance.
5. The Project encourages redevelopment, renovation or rehabilitation of commercial properties.
6. The Project incorporates the construction of public infrastructure.

## **Section 5. Project Eligibility.**

The City of Leawood has determined that CID Financing is appropriate for redevelopment or renovation of existing developments that were built at least twenty (20) years prior to the date of the petition. The 20 year period shall be measured from the date of the first building permit issued for building construction in the development. The following Projects pertaining to such developments, if otherwise qualified under the Act, may be eligible for CID Financing under this policy:

- A. Projects within the CID area to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, restore, replace, renew, repair, install, relocate, furnish, equip or extend:
  - 1. The exterior of buildings, structures, marquees and facilities;
  - 2. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, tunnels, traffic signs and signals, utilities, pedestrian or bicycle amenities, public transit options, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, and water mains and extensions;
  - 3. Parking garages;
  - 4. Streetscape, exterior lighting, street light fixtures, street light connections, street light facilities, and exterior benches, walls and barriers;
  - 5. Parks, lawns, trees and other landscape;
  - 6. Awnings and canopies;
  - 7. Bus stops and other outdoor shelters; and
  - 8. Outdoor cultural amenities, including but not limited to, sculptures and fountains.
  
- B. Within the District, to operate or to contract for the provision of parking lots or garages.
  
- C. The following project types are not eligible for CID financing:
  - 1. Roof installation, maintenance or repair;
  - 2. HVAC installation, maintenance or repair; or
  - 3. General maintenance items.

## **Section 6. Procedure.**

The City shall consider creation of a CID for improvements shown on an approved Preliminary Development Plan after receipt of a completed CID application and petition ("CID Petition) and a fee in the amount of \$500. The completed CID Petition and application will be reviewed by the City's staff, including the City Administrator, City Attorney and Finance Director.

### **A. Application.**

At submission of the application to the City for establishment of a CID, the Petitioner shall also provide the following information:

1. Evidence in a form satisfactory to the City of the Petitioner's financial ability to complete the proposed project in a timely manner.
2. Documentation substantiating the Petitioner's sources of funding, including the amount/percentage of equity funding.
3. Submission of a pro forma with project feasibility analysis.
4. Payment of all required fees and compliance with all procedural requirements of the Act and the City's CID Policy.
5. Copy of approved Preliminary Development Plan.
6. Draft of a Development Agreement to be executed contemporaneous with establishment of the CID.

### **B. Application Process.**

The City's staff will first review the application and any supplemental information requested by the City Administrator. The review will determine whether the proposed CID fulfills the criteria and objectives of this policy. If the City Administrator determines that the proposed CID meets the criteria and objectives of the policy, a Governing Body work session will be scheduled to review the CID application for preliminary consideration. If the application is favorably considered, then the Governing Body may direct staff to work with the applicant to prepare a formal petition and resolution to call a public hearing.

### **C. Petition.**

The procedure for Governing Body consideration will be in compliance with the Act and this policy and shall meet the following minimum requirements:

1. **Petition Sufficiency.** It is a goal of the Council that the CID Petition be signed by the owners of 100% of the property within the proposed district. However, if the Petitioner submits evidence that 100% participation cannot be achieved due to extenuating circumstances then the Governing Body may, in its sole discretion, choose to accept the Petition with less than 100% participation. In no case shall the signatures submitted be less than a minimum of owners of more than fifty-five percent (55%) of the land area within the proposed district, and owners collectively owning more than fifty-five percent (55%) by assessed value of the land area within the proposed district as required by the Act.
2. **Petition Submittal Requirements.** The CID Petition must contain a description of the following:
  - a. The general nature of the Project;
  - b. The estimated cost of the Project, supplemented by a preliminary budget describing each element of the Project proposed to be paid for by CID Sales Tax;
  - c. The proposed method of financing the Project;
  - d. A statement that there will be no assessments;
  - e. The proposed amount of any CID sales tax; and
  - f. A map and legal description of the proposed District.
3. **Public Hearing Procedure.** The City may, at any time, request such additional information as it deems necessary and appropriate. The CID Petition and Resolution calling for a public hearing will be placed on a Governing Body agenda, after approval of a final development plan for the property [and may be heard on the same agenda].

After review of a completed CID Petition and accompanying information by the City staff, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such Improvement District and the construction of such Projects therein. Such resolution shall direct that notice of the hearing be given by publication at least once each week for two (2) consecutive weeks in the official City Newspaper and by certified mail to all property owners within the proposed Improvement District, with the second publication to be at least seven (7) days prior to the hearing and such certified mail sent at least ten (10) days prior to such hearing. The notice of public hearing shall contain the following information:

1. The time and place of the hearing;
2. The general nature of the proposed Improvement Project;
3. The estimated cost of the proposed Improvement Project;
4. The proposed method of financing the costs of the Project;
5. The proposed amount of the CID Sales Tax;
6. Notation that there will be no assessments; and
7. A map and legal description of the proposed Improvement District.

A copy of the notice shall also be made available on the City's website.

4. **Governing Body Findings.** After the Public Hearing is conducted on the proposed CID, the Governing Body shall determine the advisability of creating an Improvement District in accordance with section 7 below, setting forth the boundaries thereof, authorizing the proposed Projects, approving the maximum Costs thereof and approving the method of financing the same. Such determinations will be made by adoption of an ordinance. Any approved CID Sales Tax will be approved by separate ordinance.

## Section 7. Consideration.

The Governing Body shall review and evaluate each CID Petition on its merits which may include, but not be limited to the following factors:

1. The Petitioner's history of timely payment of property taxes.
2. Whether the CID meets the criteria stated herein.
3. The total development costs and investment, including estimated Project costs for which public financing and CID financing is sought;
4. Sources of funding, including the amount of equity funding in comparison to CID financing;
5. Similar experience and financial stability of developer or owner;
6. Whether or not tenants for the Project are in place and the nature and quality of the tenants;
7. Economic competition the Project has and is expected to have in the future;
8. The amount and purpose of the funding request, including the percentage of funding for capital costs and public infrastructure costs;
9. Strong consideration will be given to Projects which add to and diversify the Leawood tax base as well as Projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed Project enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses.
10. The Governing Body will give strong consideration for a CID that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way.
11. The City may require higher standards for the design of improvements and materials used in making improvements within a CID. Preference will be given to businesses that practice sustainable design practices, including but not limited to, energy efficient construction, use of recycled materials, use of native and drought-resistant landscaping, and conservation of natural hydrological systems. The proposed use must be clean, nonpolluting and consistent with all City policies, ordinances, and codes. The Governing Body may require additional stipulations or revisions to the approved Final Development Plan
12. All Projects should be consistent with the City's Comprehensive Plan, street improvement plans, approved Preliminary Development Plans and any special established corridor plans. The City will consult these plans for consistency prior to the City approving any proposed CID. Preference will be given to Projects which enhance pedestrian, bicycle, or public transit options. If a Project requires a rezoning in addition to any rezoning required within the CID, the Petitioner shall demonstrate the Project's compatibility with land use, capital improvement, and other relevant plans of the City.
13. Preference will be given to those projects which bring the existing development into compliance with the City's current Leawood Development Ordinance.

**Section 8. Term.**

The Governing Body shall review the financial feasibility of each CID and shall use this information in determining the appropriate term of the CID which may be less than the duration allowed by the Act. The CID Sales Tax shall expire on a date approved by the City, but no later than 22 years from the date the state Director of Taxation begins collecting such tax or when the pay-as-you-go costs have been paid, whichever comes first.

**Section 9. Financing.**

The cost of all or a portion of any approved and authorized Project shall be financed by pay-as-you-go financing based on CID Sales Tax within the Improvement District.

After review and prior to presentation of the CID Petition to the Governing Body, the staff will work with the Petitioner on a Development Agreement which shall be presented to the Governing Body for consideration, contemporaneous with the CID Petition. The Development Agreement must be executed prior to or simultaneously with the creation of the CID and shall address the recommended method of financing, approved Projects and approved Costs, the feasibility of the Project, and other terms the City deems appropriate.

**Section 10. Project Funds.**

A separate fund shall be created for each CID ("CID Fund") and such fund shall be identified by a suitable title. CID sales Tax receipts shall be credited to such fund. The CID Fund shall be solely used to pay the approved and verified Costs of the Project. Reimbursement of approved Costs may only be made after a certificate of completion of the Project or phase of the Project has been issued by the City.

In the event moneys remain in the CID Fund after the expiration of the CID Sales Tax, such moneys shall continue to be used solely to pay the Cost of the Project. Upon payment of all

Project Costs, the City has the authority to terminate the CID and spend any moneys remaining in such fund for the purposes which local sales tax receipts may be spent.

**Section 11. Fees.**

When submitting its application, the Petitioner shall pay a non-refundable application fee in the amount of \$500 to cover City expenses associated with reviewing and processing the CID Petition. The City may also require the Petitioner to submit a retainer or enter into a funding agreement to finance costs incurred by the City for additional legal, financial and/or planning consultants; for direct out-of-pocket expenses and for other costs relating to services rendered for the City to review, evaluate, process and consider the CID Petition.

The Petitioner shall also be responsible for paying an annual administrative fee to cover the cost of monitoring and administering the CID in an amount not to exceed 2.5% of the total approved amount of CID revenues received by the City from the State Department of Revenue each year which shall be deducted from the Project Funds each year.

**Section 12. Criteria and Adjustments.**

**A. Projected Payoff.** The total amount of CID assistance provided for projects will be based on the economic payoff expectations of the Project and the Project's significance to the community. In general, the goal for Projects would be a 10-year payoff. Longer periods may be considered up to the maximum statutory payoff period of 22 years from creation of the Improvement District if a determination is made that the Project is of community-wide significance.

**B. Developer Contribution & Cost Allocation.** Each Petition should include evidence that the Petitioner or someone on Petitioner's behalf will do the following:

1. Have the financial ability to complete and operate the Project,

2. Will meet at least one of the following private financing thresholds: (a) provide private financing of at least twenty-five percent (25%) of the total cost of the Project [exterior improvements]; or (b) provide private financing of at least fifty percent (50%) of all work being done on a redevelopment project, including interior renovation. Projects with equity or private financing contributions from the developer in excess of the percent required above will be viewed more favorably,

**C. Project Completion.** The City will require satisfactory assurance that the Project will be completed in a timely manner in accordance with the Development Agreement.

**Section 13:** Resolution no. 3930 is hereby repealed.

**Section 14:** This resolution shall become effective upon passage.

PASSED by the Governing Body this 15<sup>th</sup> day of February, 2016.

APPROVED by the Mayor this 15<sup>th</sup> day of February, 2016.

  
Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

  
Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

  
Patricia A. Bennett, City Attorney

**Patty Bennett**

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**From:** Scott Lambers  
**Sent:** Wednesday, September 30, 2020 2:26 PM  
**To:** Patty Bennett  
**Subject:** FW: Need to talk

Fl. scott

**From:** John Petersen <JPetersen@Polsinelli.com>  
**Sent:** Wednesday, September 23, 2020 2:19 PM  
**To:** Scott Lambers <scottl@leawood.org>  
**Subject:** Need to talk

What's a good time for a call regarding Villa de Fontana?

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**Patty Bennett**

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**From:** John Petersen <JPetersen@Polsinelli.com>  
**Sent:** Thursday, September 24, 2020 11:13 AM  
**To:** Scott Lambers  
**Cc:** Patty Bennett; Curtis Petersen  
**Subject:** CID costs spreadsheet  
**Attachments:** # 74676651 v 5 (CID Estimated Project Costs)-c.XLSX

Scott,

Pursuant to our discussion of yesterday, please find attached hereto our development budget line items that we would seek reimbursement for under a CID Bond approach. Your earliest reaction to same would be appreciated.

Thanks

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**Patty Bennett**

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**From:** John Petersen <JPetersen@Polsinelli.com>  
**Sent:** Thursday, September 24, 2020 2:47 PM  
**To:** Scott Lambers  
**Cc:** Patty Bennett  
**Subject:** FW: Leawood CID Policy

Scott,

Second follow up to our conversation regarding CID utilization, in this case, in regard to current City Policy. See below.

**From:** Judy Hunt <JHunt@Polsinelli.com>  
**Sent:** Thursday, September 24, 2020 2:18 PM  
**To:** John Petersen <JPetersen@Polsinelli.com>  
**Subject:** Leawood CID Policy

## **RESOLUTION AMENDING THE CITY OF LEAWOOD'S COMMUNITY IMPROVEMENT DISTRICT ["CID"] POLICY AND REPEALING RESOLUTION NO. 3930.**

### **Section 2. Scope.**

This policy will apply when an owner or developer of land ("Petitioner") submits a proper petition (COD Petition") and application to create a OD and/or utilize CID financing to fund approved Projects. The authority and decision to approve a CID Petition is within the sole discretion of the Governing Body. This policy is intended to provide guidelines only, and the Governing Body reserves its right to deviate from this Policy when it deems it to be in the best interest of the City.

Of Foundational importance is that the document clearly contemplates it is a "Policy" and not intended to tie the hands of the Governing Body to utilize a CID pursuant to the enabling legislation. Based thereon please find the following observations based on our conversation;

- 1) State law allows CID for residential development and the Policy does not overtly prohibit it.
- 2) That said, the Policy only mentions added sales tax as revenue source, not assessments, which suggests commercial.
- 3) Policy restricts financing to PAY GO, without mentioning Bonds

Fontana needs assessment based structure with CID GO Bonds to monetize the revenue produced from assessments. Allowed by Statute.

#### **Section 4. Criteria.**

The Governing Body may consider establishment of a OD when it determines it is in the City's best interest and provided that it meets one or more of the following criteria:

1. The Project would attract and promote mixed use development.
2. The CID area has unique site constraints making development more difficult and costly.
3. The Project would substantially promote economic development.
4. The Project would incorporate higher standards for the design and construction of improvements than the minimum requirements under the Leawood Development Ordinance.
5. The Project encourages redevelopment, renovation or rehabilitation of commercial properties.
6. The Project incorporates the construction of public infrastructure.

Three existing criteria in the Policy that fits with Fontana request.

## Section 5. Project Eligibility.

- A. Projects within the CID area to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, restore, replace, renew, repair, install, relocate, furnish, equip or extend:
1. The exterior of buildings, structures, marquees and facilities;
  2. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, tunnels; traffic signs and signals, utilities, pedestrian or bicycle amenities, public transit options, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, and water mains and extensions;
  3. Parking garages;
  4. Streetscape, exterior lighting, street light fixtures, street light connections, street light facilities, and exterior benches, walls and barriers;
  5. Parks, lawns, trees and other landscape;
  6. Awnings and canopies;
  7. Bus stops and other outdoor shelters; and
  8. Outdoor cultural amenities, including but not limited to, sculptures and fountains.
- B. Within the District, to operate or to contract for the provision of parking lots or garages.

Our costs to be reimbursed fit nicely into Policy targeted budget line items per my earlier list of I sent you.

Finally, I would estimate the overall project horizontal to vertical to be in the \$100 million dollar range, if not a bit more. This \$3 million dollar CID equals 3% of financing.

Positioned another way, approximately 3 million of public money paid back or obligation to pay eliminated in exchange for decision, based on a very unique set of circumstances, to go outside of strict adherence to the Policy and agree to a \$ 3 million assessment based CID.

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Proposed CID Expenses - Villa de Fontana (135th and Roe)  
 Estimated Project Costs

Scope of Work	CID Estimated Cost	Statutory Authority
Adjusting Existing Storm and Sanitary Sewers	\$ 1,155,000	KSA 12-6a27(m)(1)(B)
Fine grading, asphalt, and curbing new cul-de-sacs	\$ 150,000	KSA 12-6a27(m)(1)(B)
Water Lines	\$ 370,000	KSA 12-6a27(m)(1)(B)
Gas and Electric Lines	\$ 180,000	KSA 12-6a27(m)(1)(B)
Perimeter Retaining Wall	\$ 553,500	KSA 12-6a27(m)(1)(D)
Mill/overlay streets; curb repair	\$ 150,000	KSA 12-6a27(m)(1)(B)
Landscaping	\$ 250,000	KSA 12-6a27(m)(1)(E)
Street lights	\$ 52,500	KSA 12-6a27(m)(1)(D)
Utilities crossings	\$ 75,000	KSA 12-6a27(m)(1)(B)
Pickleball, dog park, open space, bocce, etc.	\$ 225,000	KSA 12-6a27(m)(1)(E)
Contingency	\$ 200,000	
Civil engineering / survey	\$ 225,000	KSA 12-6a27(f)
<b>Subtotal</b>	<b>\$ 3,586,000</b>	
Costs of Issuance		KSA 12-6a27(f)
Temporary Note Interest (24 months)		KSA 12-6a27(f)
<b>Subtotal</b>	<b>\$ -</b>	
<b>Total</b>	<b>\$ 3,586,000</b>	

NOTES
All costs are on "main or lateral storm and sanitary lines" (includes demo of portions of existing lines)
Water One to relocate lines and establish residential services (no tap fees included); NONE of this is private service lines (all owned by Water One)
All costs of landscaping is along streets.
Approx. 46 places where water/gas/electric cross streets)
Additional Costs associated with items above

## Patty Bennett

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**From:** John Petersen <JPetersen@Polsinelli.com>  
**Sent:** Sunday, September 27, 2020 10:31 PM  
**To:** Patty Bennett  
**Cc:** Scott Lambers; Curtis Petersen  
**Subject:** Fontana - Draft DA  
**Attachments:** # 74690409 v 3 (Development Agreement (Villas de Fontana))-c.DOCX

Patty,

Attached hereto is our draft DA for the Fontana Project. As you will see we, we are proposing utilization of an assessment based CID as opposed to an SBD to partially finance the project. As I discussed with Scott last week, the eligible costs under an SBD that we were able to find agreement on with Gilmore left us short in terms of matching up with our payments of past assessments, taxes and defeasance of the existing SBD bonds. The statutory provisions for a CID provides the flexibility to get the job done. The costs we are contemplating to be covered by the CID were in the line items I sent you and Scott last week. Please know, the exact budget in that regard is now an attachment to the draft DA.

I recognize there will be CID Policy issues to consider and discuss but, given the uniqueness of this matter, I am hopeful we can work through those. Curt and I would suggest a call on Tuesday morning for us to walk through this together. Your call of course but we would welcome Gilmore on the call as well so we can vet all issues in the most efficient manner possible.

Thanks and let me know if Tuesday morning would work for you.

### John D. Petersen

*Shareholder | Real Estate Division Chair*

[jpetersen@polsinelli.com](mailto:jpetersen@polsinelli.com)

**913.234.7405**

900 W. 48th Place, Suite 900  
Kansas City, MO 64112

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# VILLAS DE FONTANA DEVELOPMENT AGREEMENT

**THIS VILLAS DE FONTANA DEVELOPMENT AGREEMENT** (this “Agreement”) is made and entered into this 12<sup>th</sup> day of October, 2020 (the “Effective Date”), by and between the **CITY OF LEAWOOD, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and **FONTANA LAND COMPANY, LLC**, a Kansas limited liability company (the “Developer”).

## **RECITALS:**

A. The land that is the subject of this Agreement is generally bounded by 135<sup>th</sup> Street to the north, Leawood Meadows residential subdivision to the south, Roe Avenue to the west, and Fontana Street to the east, as legally described and depicted on Exhibit A attached hereto (the “Project Site”).

B. On or about 2007, a private developer (the “Original Developer”) commenced efforts to develop the Project Site with a mix of retail, office, and elderly care uses by constructing the necessary onsite streets, completing utility extensions, constructing an additional lane on 135<sup>th</sup> Street adjacent to the Project Site, burying the power lines along the Project Site’s 135<sup>th</sup> Street frontage, and completing certain other infrastructure improvements on the Project Site.

C. The Original Developer utilized a highly leveraged method of financing the infrastructure improvements, which included, in addition to traditional bank debt, three separate Special Benefit Districts with special assessments (“Current SBD Assessments”) for street and utility work, and Transportation Development District (“TDD”) assessments for 135<sup>th</sup> Street lane construction and burial of the adjacent power lines.

D. The City issued approximately \$6,000,000 of general obligation bonds (the “Original GO Bonds”) underwritten with the Current SBD Assessments and \$835,000 of TDD special obligation bonds (the “TDD Bonds”) secured by the TDD assessments.

E. The City subsequently issued additional general obligation bonds to refund the Original GO Bonds (the “Existing GO Bonds”).

F. Over the approximately twelve (12) year period following the Original Developer’s completion of such multi-million dollar infrastructure, only two small commercial buildings were constructed on the Project Site – one at the southwest corner of 135<sup>th</sup> Street and Fontana Street (4501 W. 135<sup>th</sup> Street) and the other on the north side of 137<sup>th</sup> Street west of Fontana Street (4630 W. 137<sup>th</sup> Street, #100) (collectively, the “Existing Buildings”).

G. With a lack of sufficient users for the Project Site and bank debt service payments, special assessments, and real property taxes mounting, the Original Developer lost the Project Site to its mortgage lender.

H. The mortgage lender held and marketed the Project Site for a period of time and then in 2017 sold the Project Site to another private developer (the “Second Developer”).

I. The Second Developer failed to obtain any market traction and in 2019 conveyed the Project Site to its mortgage lender.

J. The Current SBD Assessments are delinquent and the City has made principal payments on the Existing GO Bonds (that should have been offset by collection of Current SBD Assessments) totaling \$1,399,656 (the “City’s Unreimbursed GO Principal Payments”), with \$1,460,792 of principal and interest payments needed going forward to retire the outstanding portion of the Existing GO Bonds associated with the Project Site.

K. The TDD assessments are delinquent and the TDD Bonds are in default, with more than \$536,000 needed to retire the TDD bonds over the next several years.

L. No real property taxes have been paid for the Project Site in nearly five (5) years. Inclusive of penalties and interest, total taxes owed are \$954,214 (the “Delinquent Property Taxes”).

M. Developer has secured the contractual right to acquire the Project Site and, subject to the City’s execution of this Agreement and performance hereunder, intends to close on the acquisition of the Project Site and to develop and construct thereon an approximately 63-homesite residential villa community to be known as “Villas de Fontana” (the “Project”).

N. Immediately after the Effective Date hereof, Developer will file the Petition for the Creation of a Community Improvement District (135<sup>th</sup> Street & Fontana) (the “CID”), the form of which is attached hereto as Exhibit B (the “CID Petition”), and the Waiver of Assessment Proceedings (the “Waiver of Assessment Proceedings”), the form of which is attached hereto as Exhibit C, with the City Clerk, for the purpose of the City levying CID special assessments against the Project Site (the “CID Assessments”), in place of the Current SBD Assessments, to finance \$3,000,000 of Project costs set forth on Exhibit D attached hereto (the “CID Costs”).

O. Developer has represented that without this Agreement and the City’s performance hereunder, the Project is not financially feasible, and thus to induce Developer to move forward with acquisition of the Project Site and development of the Project, Developer and the City each hereby agree to the following obligations, terms, and conditions.

## **AGREEMENT**

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

### **ARTICLE I. DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Incorporation of Recitals.** The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

**Section 1.02. Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

(a) The terms defined in this Agreement include the plural as well as the singular.

(b) All references in this Agreement to designated "Articles," "Sections" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this Agreement as originally executed.

(c) 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.

(d) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 1.03. Legal Representation of the Parties.** This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation of this Agreement.

## **ARTICLE II. DEVELOPMENT OF THE PROJECT**

**Section 2.01. Development of the Project Site.** The City and Developer hereby agree that the Project consists of the design, development and construction of an approximately 63-homesite residential villa community to be known as "Villas de Fontana." Developer hereby contemplates that all such improvements shall be developed, constructed, completed, and operated on the Project Site in substantial accordance and compliance with the terms and conditions of this Agreement.

**Section 2.02. Completion of the Project.** Developer's construction of the Project shall be in conformance with the zoning ordinances, related stipulations, City building codes, and all other applicable rules and regulations. Before commencement of construction or development of the Project, Developer shall obtain any and all permits, which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

**Section 2.03. Relationship of the City and Developer.** The performance of all activities by Developer hereunder shall be as an independent developer and not as an agent of the City.

**Section 2.04. Developer Financing.** The Developer warrants and represents to the City that, based on the City's performance of all City obligations under this Agreement, Developer has the ability to obtain financing for the entire Project.

**Section 2.05. Certain City Fees.** The City hereby agrees that the Project is exempt from, and the Developer will therefore have no obligation to pay, the South Leawood Transportation Fee, the 135<sup>th</sup> Street Corridor Fee, and the Park Fee that otherwise would have been applicable to the Project Site as part Developer’s development of the Project thereon.

**ARTICLE III.  
DEVELOPER’S INITIAL OBLIGATIONS**

Within thirty (30) days of the Effective Date, Developer shall: (x) acquire the Project Site; (y) purchase the TDD Bonds; and (z) pay all of the Delinquent Property Taxes to the Johnson County, Kansas Treasurer (collectively, “Developer’s Initial Obligations”).

**ARTICLE IV.  
COMMUNUNITY IMPROVEMENT DISTRICT**

**Section 4.01. CID Ordinance.** Developer shall file the fully executed CID Petition and Waiver of Assessment Proceedings with the City Clerk immediately following the Effective Date hereof. If the City Council has not approved the CID Petition by ordinance (the “CID Ordinance”) on or before December 21, 2020 (“CID Ordinance Deadline”), the City shall forever hold Developer harmless from: (x) any obligation to reimburse the City for the City’s Unreimbursed GO Principal Payments (including any obligation to pay past due Current SBD Assessments); and (y) all Current SBD Assessments applicable to the Project Site that are due and payable as of the Effective Date hereof or become due and payable after the Effective Date hereof.

**Section 4.02. Issuance of Temporary GO Notes.** If the City adopts the CID Ordinance on or before the CID Ordinance Deadline, within forty-five (45) days after adoption of the CID Ordinance, subject to Section 4.04 hereof, the City shall issue temporary general obligation notes in an amount necessary to finance the CID Costs, plus any associated costs of issuance and capitalized interest, if any (the “Temporary GO Notes”); provided that, the City shall have no obligation to issue the Temporary GO Notes unless and until Developer has satisfied Developer’s Initial Obligations.

**Section 4.03. Disbursement of Temporary GO Notes Proceeds.** Temporary GO Notes proceeds will be disbursed to pay for CID Costs or to reimburse Developer for such costs following Developer’s submission of, and the City’s approval of, a request for disbursement (“Disbursement Request”), which shall be promptly submitted by the Developer to the City, but not more often than monthly. As part of each Disbursement Request, Developer shall provide **[NOTE: City to modify if their process/requirements dictate]** a summary sheet detailing the costs to be reimbursed or paid, an exhibit updating the estimated CID Costs table attached hereto as Exhibit D to show the current requested disbursement by line item and the cumulative prior disbursements, itemized invoices and, if a request for reimbursement of Developer rather than payment of costs, then receipts or other information reasonably requested, if any, to confirm that any such cost has been incurred and paid. Developer shall provide such additional information as reasonably requested by the City to confirm that any such Disbursement Request is limited to CID Costs. The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Disbursement Request is submitted, to examine

the Developer's records relating to all costs included in a Disbursement Request, and to obtain such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

The City shall have thirty (30) calendar days after receipt of any Disbursement Request to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Disbursement Request reflects CID Costs; (2) the expense was incurred (if the Disbursement Request is a request for reimbursement of Developer rather than for payment of costs); (3) Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Disbursement Request and disburse the Temporary GO Notes Proceeds in the amount of the approved Disbursement Request. If the City disapproves of the Disbursement Request, the City shall notify the Developer in writing of the reason for such disapproval within such thirty (30) day period. If the City determines that a deficiency in the Disbursement Request applies to less than all expenses set forth thereon, the City shall timely approve that portion of the Disbursement Request to which the deficiency does not apply. With respect to any costs that are disapproved, Developer shall then have the opportunity to resubmit a Disbursement Request relating to such costs and the City shall review and respond to the Developer pursuant to this subsection within ten (10) days.

**Section 4.04. Conditions to City's Issuance of Temporary GO Notes.** Simultaneously with, and as a condition to the City's issuance of the Temporary GO Notes, Developer shall: (x) defease the Existing GO Bonds in accordance with any and all requirements of the Existing GO Bonds indenture and other bond documents, which shall eliminate the Current SBD Assessments (that are levied against the Project Site) and terminate the City's obligation to ensure payment of all future obligations under the Existing GO Bonds; and (y) reimburse the City for the City's Unreimbursed GO Principal Payments.

**Section 4.05. Issuance of CID Bonds.** In conjunction with the City's levy of the CID Assessments in 2023 pursuant to the CID Petition, the City agrees to issue general obligation CID bonds with a term of twenty (20) years ("CID Bonds") in the amount necessary to redeem the Temporary GO Notes and pay associated costs of issuance and capitalized interest, if any.

**Section 4.06. Line Items.** The parties hereby agree that the Temporary GO Notes proceeds can be used to pay for any Project line items of work set forth on Exhibit D attached hereto, including in excess of the estimated cost set forth in each such line item on Exhibit D; subject at all times to the aggregate amount of CID Costs set forth on Exhibit D and the Disbursement Request approval process set forth in Section 4.02 above.

## **ARTICLE V. ASSIGNMENT AND TRANSFER**

**Section 5.01. Assignments by Developer.** The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City's Governing Body, which approval shall be in the City's sole discretion. The City hereby understands and agrees that any approval of the City's Governing Body pursuant to the prior sentence shall release Developer from the obligations set forth in this Agreement provided that the Developer is not then in default under the terms of this Agreement and, further,

such release shall only be to the extent such obligations are assumed by the assignee and its successors and assigns. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Project, such obligations, conditions and restrictions to the extent that they relate to such portion).

**Section 5.02. Excluded Assignments.** The foregoing restrictions in Section 5.01 shall not apply to: i) any security interest granted to secure indebtedness to any construction or permanent lender; or ii) any assignment associated with the transfer of the Property and/or some or all of the rights and/or obligations under this Agreement to a person or entity that is controlled by Developer, which Developer controls, or that is under common control with Developer (an "Affiliate"). Developer hereby agrees to provide the City with written notice of any assignment permitted by this Section 5.02 within ten (10) days after such assignment.

## **ARTICLE VI. USE AND OPERATION OF THE PROJECT**

**Section 6.01. Term.** This Agreement shall terminate upon the City's issuance of the CID Bonds (the "Term"), after which time the parties hereto shall have no further obligations under this Agreement; provided that, if a party (the "Non-Defaulting Party") has served a notice of default upon the other party (the "Defaulting Party") prior to such termination, the Non-Defaulting Party may pursue to completion any remedies available hereunder related to such Defaulting Party's default.

**Section 6.02. Compliance.** Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all applicable laws, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any government authorities applicable to the conduct of their business and operations and the ownership of the Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by applicable laws. Nothing herein is meant to limit Developer's right to challenge the validity, interpretation, or application of any applicable laws.

**Section 6.03. Licenses and Permits.** Developer hereby recognizes, stipulates and agrees (a) that in the design, construction, completion, use or operation of the Project, Developer, or its general contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all applicable laws.

**Section 6.04. Access.** During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its

rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Nothing contained in this Section 6.04 shall restrict or impede the right of the City to enter the Project Site pursuant to any applicable laws.

**Section 6.05. Periodic Meetings with the City.** From the Effective Date until substantial completion of the Project, Developer hereby agrees to meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Project. At any time during the Term of this Agreement, Developer hereby agrees to reasonably respond to requests for information from the City or its representatives about the Project.

**Section 6.06. Payment of Taxes.** The Developer agrees to pay all real estate tax bills, including bills for taxes and installments of special assessments, affecting both the Property and any other property owned by Developer within the City, promptly on or before the due date of such tax bills. Developer shall have the right to protest property valuation and to oppose the levy of special assessments, in accordance with applicable law.

**Section 6.07. Power of the City.** 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 City to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all applicable laws.

## **ARTICLE VII. DEFAULTS AND REMEDIES**

**Section 7.01. Default by the City.** The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

**Section 7.02. Developer's Remedies Upon Default by the City.** If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and the City shall not be liable for remote, punitive or consequential damages. The City's liability hereunder shall also be limited by applicable laws.

**Section 7.03. Default by Developer.** Developer shall be in default under this Agreement if:

- (a) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying

such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(b) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Developer whereupon the District, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subsection being deemed a default under the provisions of this Agreement).

**Section 7.04. City's Remedies Upon Default by Developer.** Upon the occurrence and continuance of a Developer default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may terminate this Agreement.

(b) The City 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 City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default. Developer's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the Developer be liable for any remote, punitive or consequential damages.

**Section 7.05. Legal Actions.**

(a) Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

(b) Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process.

(i) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer or Agent shall be made by personal service upon an officer or agent of the Developer or Agent and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

**Section 7.06. Inaction Not a Waiver of Default.** Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 7.07. Excusable Delays; Extension of Times of Performance.**

(a) In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party such as but not limited to: default of other party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform ("Excusable Delays").

(b) The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. Developer shall provide notice to the City if and when any such Excusable Delays occur and Developer may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays.

## **ARTICLE VIII. GENERAL PROVISIONS**

**Section 8.01. Time of Essence.** Time is of the essence of this Agreement. The City and Developer 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 8.02. Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the parties.

**Section 8.03. Immunity of Officers, Employees and Members of the City.** No personal recourse shall be had for any claim under this Agreement based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and

released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, for any default or breach by the City.

**Section 8.04. Right to Inspect.** The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the Disbursement Requests.

**Section 8.05. No Other Agreement.** Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

**Section 8.06. Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held 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. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

**Section 8.07. Notice.** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To the Developer:

Fontana Land Company, LLC  
10800 Farley, Suite 265  
Overland Park, KS 66210  
Attn: Mark R. Simpson

With copies to:

John D. Petersen, Esq.  
Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112

(b) To the City:

Scott Lambers, City Administrator  
City of Leawood  
4800 Town Center Drive  
Leawood, KS 66211

With copies to:

Patricia Bennett, City Attorney

Leawood Justice Center  
4205 Town Center Drive  
Leawood, KS 66211

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by certified 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 8.08. 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 8.09. Incorporation of Exhibits.** The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

**Section 8.10. Tax Implications.** The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

**Section 8.11. Amendment to Carry Out Intent.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future Governing Body of the City in a manner prohibited by the laws of the State of Kansas.

**[Remainder of page intentionally left blank. Signature page immediately follows.]**

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF LEAWOOD, KANSAS**

\_\_\_\_\_  
Peggy Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Debra Harper, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Patricia A. Bennett  
City Attorney

**FONTANA LAND COMPANY, LLC**, a Kansas  
limited liability company

By: \_\_\_\_\_  
Mark R. Simpson, Manager

**EXHIBIT A**  
**PROJECT SITE LEGAL DESCRIPTION AND BOUNDARY MAP**

*[Description used in Rezoning & Preliminary Plat]*

Lots 1 and 2 and Tracts A, B, C and D, The Villaggio at Leawood, a subdivision in the City of Leawood, Johnson County, Kansas.

EXCEPT that part platted as Gardens of Villaggio, Lots 1 thru 3 and Tract A, a subdivision in the City of Leawood, Johnson County, Kansas.

AND EXCEPT that part platted as Gardens of Villaggio, Second Plat, a subdivision in the City of Leawood, Johnson County, Kansas.

AND EXCEPT A part of Lot 1, THE VILLAGGIO AT LEAWOOD, a subdivision in the City of Leawood, Johnson County, Kansas described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 33, Township 13 South, Range 25 East; thence along the North line of said Northeast Quarter of North 87 degrees 43 minutes 34 seconds East, a distance of 1073.24 feet; thence South 02 degrees 16 minutes 26 seconds East, 85.00 feet to a point on the South Right of Way line of 135th Street and being a point on the North line of said Lot 1, also being the Point of Beginning; thence North 87 degrees 43 minutes 34 seconds East along said lines, 118.66 feet to the Northwest corner of Tract B in said subdivision; thence South 47 degrees 05 minutes 49 seconds East along the Westerly line of said Tract B, 102.34 feet to a point on the West Right of Way line of Fontana Street also being a point on the East line of said Lot 1; thence South 01 degrees 55 minutes 13 seconds East along said lines, 248.18 feet; thence South 87 degrees 43 minutes 34 seconds West, 124.14 feet to a point of curvature; thence along a curve to the right with a radius of 150.00 feet and a distance of 67.37 feet; thence North 02 degrees 16 minutes 26 seconds West, 305.88 feet to the Point of Beginning,

TOGETHER WITH:

All of Lot 1 and part of Lot 2 and Tract A, GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence N 13°43'34" E, along the Westerly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 236.66 feet to the Northwest plat corner of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence S 76°16'26" E, along the North plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 344.36 feet to the Northeast plat corner of said GARDENS OF

VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence S 13°43'34" W, along the Easterly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 91.91 feet; thence N 76°16'26" W, a distance of 162.58 feet; thence S 45°57'14" W, a distance of 67.09 feet; thence S 13°43'34" W, a distance of 88.00 feet to the South plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence N 76°16'26" W, along the Southerly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 146.00 feet to the point of beginning, containing 1.2351 acres, more or less, replatted land.



**EXHIBIT B**  
**FORM OF CID PETITION**

**PETITION FOR THE CREATION OF A**  
**COMMUNITY IMPROVEMENT DISTRICT**  
**(135<sup>TH</sup> STREET & FONTANA)**

**TO:** City Council,  
City of Leawood, Kansas

The undersigned (the “**Petitioners**”), being the owners of record, whether resident or not, of the following:

1. One Hundred percent (100%) of the land area contained within the hereinafter described community improvement district; and
2. One Hundred percent (100%) by assessed value of the land area contained within the hereinafter described community improvement district.

hereby petitions the City of Leawood, Kansas (the “**City**”) to create the 135<sup>th</sup> Street & Fontana Community Improvement District (the “**CID**”) and authorize the proposed CID project (the “**CID Project**”) hereinafter set forth, all in the manner provided by K.S.A § 12-6a26, *et seq.* (the “**Act**”). In furtherance of such request, the Petitioners state as follows:

**1. GENERAL NATURE**

The general nature of the proposed CID Project consists of sitework, utilities, landscaping and other infrastructure and amenities improvements for a residential villas development.

**2. ESTIMATED COST**

The estimated cost of the CID Project is \$3,000,000, as shown in more detail on **EXHIBIT “A”**.

**3. PROPOSED METHOD OF FINANCING**

The proposed method of financing the CID Project is from the levy of assessments within the CID pursuant to the Act as described in paragraph 4 of this Petition (the “**CID Assessments**”), and through the City’s issuance of temporary general obligation notes (the “**Temporary Notes**”), the proceeds of which would be used to pay for or reimburse the cost of the CID Project up to \$3,000,000, as well as the costs of any associated costs of issuance and capitalized interest. In conjunction with the City’s levy of the CID Assessments in 2023 as described in paragraph 4 of this Petition, it is proposed that the City issue general obligation CID bonds (the “**CID Bonds**”) in the amount necessary to redeem the Temporary Notes and pay associated costs of issuance and capitalized

interest, if any.

**4. PROPOSED METHOD AND AMOUNT OF ASSESSMENT**

CID Assessments will be levied for twenty (20) years, beginning with tax year 2023, against each residential lot (i.e., each platted lot designed for construction of a residence thereon) in equal annual amounts per lot as necessary to amortize the CID Bonds and pay any associated costs of issuance and capitalized interest.

**5. PROPOSED AMOUNT OF SALES TAX**

No CID sales tax is proposed.

**6. MAP AND LEGAL DESCRIPTION OF THE PROPOSED CID**

A map of the CID is attached hereto at EXHIBIT “B”.

The legal description of the CID is attached hereto at EXHIBIT “C”.

**7. NOTICE TO PETITION SIGNER**

Petitioners hereby acknowledge that signatures may not be withdrawn from this Petition by the signers hereof after the Governing Body of the City commences consideration of this Petition, or later than seven (7) days after the filing hereof with the City Clerk, whichever occurs first. In addition, Petitioners consent to any assessments to the extent described herein without regard to benefits conferred by the CID Project.

**8. PETITION BINDING ON FUTURE OWNERS**

Petitioners hereby acknowledge that if this Petition is not properly withdrawn as permitted by the Act, any future owners of real property within the CID shall be bound by this Petition.

**9. BOND MARKETABILITY**

Petitioners hereby acknowledge that the City will record this Petition if the proposed CID Project is approved by the City Council and that by the acceptance of this Petition, the City Council is not making any representation as to issuance or the marketability of the Temporary Notes or the CID Bonds. Aside from the specific terms set forth herein, the Petitioners assume the risk that the Temporary Notes and CID Bonds can be issued under terms acceptable to the City.

**10. COUNTERPARTS**

This Petition may be executed in one or more counterparts and by each signer hereof on a separate counterpart, each of which when so executed and delivered shall be an original,

and all of which shall constitute one instrument.

**11. ACKNOWLEDGMENTS**

Petitioners acknowledge that: (A) the City's approval of this Petition or of the CID Project set forth in this Petition and creation of the CID by the City as proposed in this Petition does not eliminate independent requirements by the Petitioners to comply with all applicable zoning, planning, permit and other laws relating to the development of property, and (B) the City is relying on the estimated costs of the CID Project set forth in this Petition without independent investigation as to the accuracy of such estimates.

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**EXHIBIT "A"**

*(To CID Petition)*

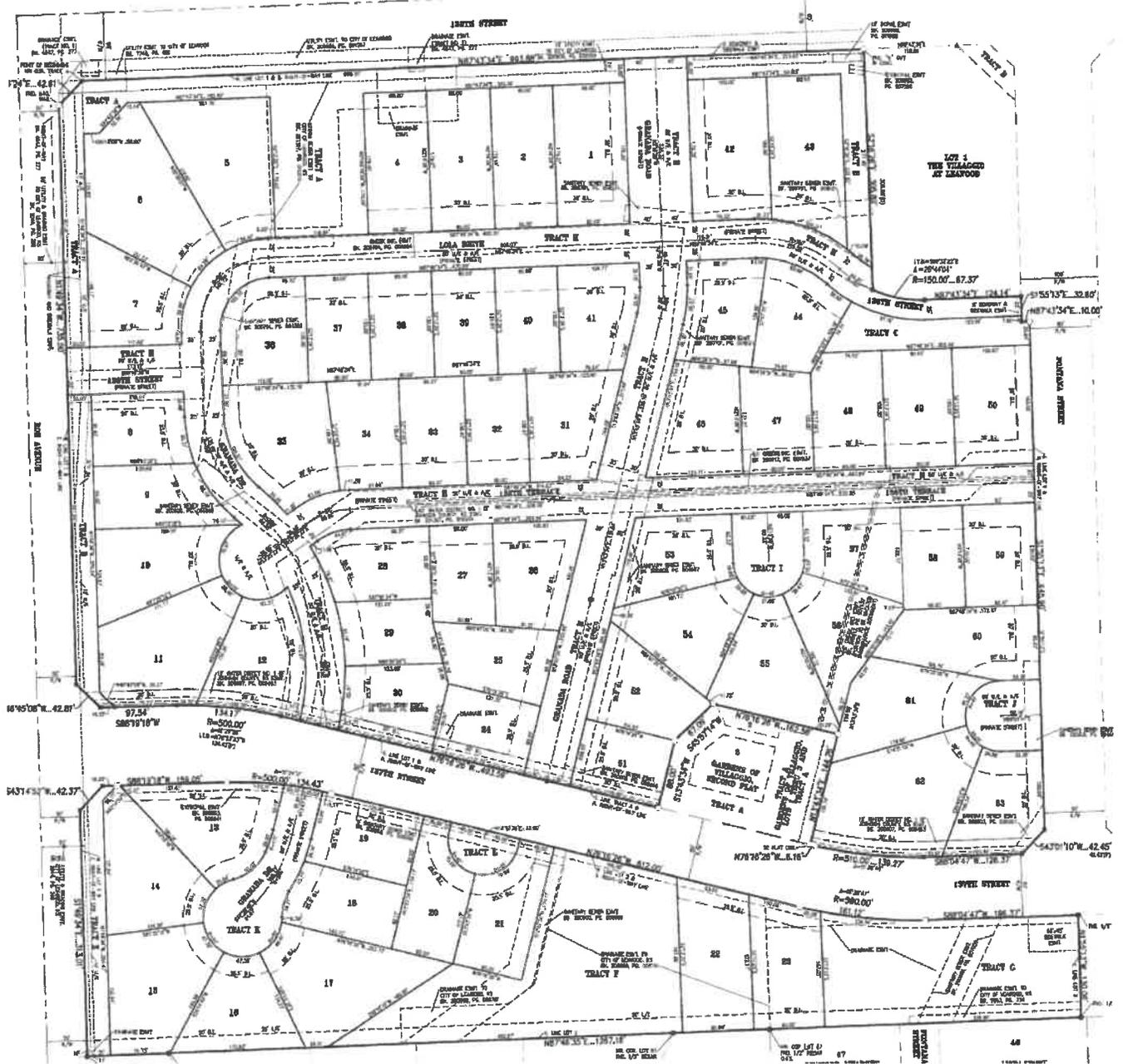
**CID PROJECT COSTS**

<u>Scope of Work</u>	<u>Estimated CID Project Costs</u>
Adjusting Existing Storm and Sanitary Sewers	\$ 1,050,000
Fine grading, asphalt, and curbing new cul-de-sacs	\$ 115,000
Water Lines	\$ 320,000
Gas and Electric Lines	\$ 150,000
Perimeter Retaining Wall	\$ 495,000
Mill/overlay streets; curb repair	\$ 150,000
Landscaping	\$ 205,000
Street lights	\$ 40,000
Utilities crossings	\$ 50,000
Pickleball, dog park, open space, bocce, etc.	\$ 75,000
Contingency	\$ 200,000
Civil engineering / survey	\$ 150,000
<b>Total Estimated CID Project Costs</b>	<b>\$ 3,000,000</b>

# EXHIBIT "B"

(To CID Petition)

## MAP OF CID



**EXHIBIT "C"**

***(To CID Petition)***

**LEGAL DESCRIPTION OF CID**

*[Description used in Rezoning & Preliminary Plat]*

Lots 1 and 2 and Tracts A, B, C and D, The Villaggio at Leawood, a subdivision in the City of Leawood, Johnson County, Kansas.

EXCEPT that part platted as Gardens of Villaggio, Lots 1 thru 3 and Tract A, a subdivision in the City of Leawood, Johnson County, Kansas.

AND EXCEPT that part platted as Gardens of Villaggio, Second Plat, a subdivision in the City of Leawood, Johnson County, Kansas.

AND EXCEPT A part of Lot 1, THE VILLAGGIO AT LEAWOOD, a subdivision in the City of Leawood, Johnson County, Kansas described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 33, Township 13 South, Range 25 East; thence along the North line of said Northeast Quarter of North 87 degrees 43 minutes 34 seconds East, a distance of 1073.24 feet; thence South 02 degrees 16 minutes 26 seconds East, 85.00 feet to a point on the South Right of Way line of 135th Street and being a point on the North line of said Lot 1, also being the Point of Beginning; thence North 87 degrees 43 minutes 34 seconds East along said lines, 118.66 feet to the Northwest corner of Tract B in said subdivision; thence South 47 degrees 05 minutes 49 seconds East along the Westerly line of said Tract B, 102.34 feet to a point on the West Right of Way line of Fontana Street also being a point on the East line of said Lot 1: thence South 01 degrees 55 minutes 13 seconds East along said lines, 248.18 feet; thence South 87 degrees 43 minutes 34 seconds West, 124.14 feet to a point of curvature; thence along a curve to the right with a radius of 150.00 feet and a distance of 67.37 feet; thence North 02 degrees 16 minutes 26 seconds West, 305.88 feet to the Point of Beginning,

TOGETHER WITH:

All of Lot 1 and part of Lot 2 and Tract A, GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Southwest corner of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence N 13°43'34" E, along the Westerly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 236.66 feet to the Northwest plat corner of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence S 76°16'26" E, along the North plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 344.36 feet to the Northeast plat corner of said GARDENS OF

VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence S 13°43'34" W, along the Easterly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 91.91 feet; thence N 76°16'26" W, a distance of 162.58 feet; thence S 45°57'14" W, a distance of 67.09 feet; thence S 13°43'34" W, a distance of 88.00 feet to the South plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A; thence N 76°16'26" W, along the Southerly plat line of said GARDENS OF VILLAGGIO, LOTS 1 THRU 3 AND TRACT A, a distance of 146.00 feet to the point of beginning, containing 1.2351 acres, more or less, replatted land.

**EXHIBIT C**  
**FORM OF WAIVER OF ASSESSMENT PROCEEDINGS**

**TO THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:**

The undersigned, (the “Owner”), is the record titled owner of 100% of the real estate situated in the City of Leawood, Kansas (the “City”) legally described on Exhibit 1 attached hereto (the “Property”).

Pursuant to a petition filed with the City Clerk on \_\_\_\_\_, 2020 (the “Petition”), the Owner has requested that Community Improvement District (“CID”) special assessments be levied on the Property as set forth in the Petition to pay for or reimburse the costs of the CID Project (as defined in the Petition).

After being advised of the Owner’s right to a public hearing and other matters related to the CID special assessments related to the CID Project, the Owner hereby agrees to the following:

1. Waiver of formal notice of and the holding of a public hearing by the governing body of the City for the purpose of considering levying the CID special assessments against the Property;
2. Consent to the levy of CID special assessments against the Property as set forth in the Petition to be assessed equally per lot within the CID payable annually over a period of 20 years, beginning with the tax bill to be distributed in December 2023 (the “Special Assessment”);
3. Waiver of the thirty (30) day period after publication of the assessment ordinance of the City to contest the levy of the Special Assessment; and
4. The terms, provisions, and obligations hereof shall run with the land and apply to any subsequent owners of the Property.

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# Exhibit 1

## *(To the Waiver of Assessment Proceedings)*

### **Legal Description of the Property**

*[Description used in Rezoning & Preliminary Plat]*

Lots 1 and 2 and Tracts A, B, C and D, The Villaggio at Leawood, a subdivision in the City of Leawood, Johnson County, Kansas.

EXCEPT that part platted as Gardens of Villaggio, Lots 1 thru 3 and Tract A, a subdivision in the City of Leawood, Johnson County, Kansas.

AND EXCEPT that part platted as Gardens of Villaggio, Second Plat, a subdivision in the City of Leawood, Johnson County, Kansas.

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TOGETHER WITH:

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**EXHIBIT D**  
**CID COSTS**

<u>Scope of Work</u>	<u>Estimate CID Costs</u>
Adjusting Existing Storm and Sanitary Sewers	\$ 1,050,000
Fine grading, asphalt, and curbing new cul-de-sacs	\$ 115,000
Water Lines	\$ 320,000
Gas and Electric Lines	\$ 150,000
Perimeter Retaining Wall	\$ 495,000
Mill/overlay streets; curb repair	\$ 150,000
Landscaping	\$ 205,000
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Contingency	\$ 200,000
Civil engineering / survey	\$ 150,000
<b>Total</b>	<b>\$ 3,000,000</b>