

NON-DEVELOPMENT AGREEMENT - (RP-OS)

THIS NON-DEVELOPMENT AGREEMENT (“Agreement”) is made as of the ____ day of _____, 20__ by and between _____ (the “Developer”), and the City of Overland Park, Kansas, a Kansas municipal corporation (the “City”).

WHEREAS, the Developer is the owner of a parcel of land located within the boundaries of the City as legally described as follows (the “Property”):

[INSERT LEGAL DESCRIPTION]

WHEREAS, the Developer desires to develop a residential subdivision on the Property as a “RP-OS” Planned Open Space Single-Family Residential District under Chapter 18.176 of the Overland Park Municipal Code; and

WHEREAS, the planned open spaces on the Property are legally described as: _____, a subdivision in the City of Overland Park, Johnson County, Kansas (the “Open Spaces”); and

WHEREAS, the Development and Performance Standards in Chapter 18.176 of the Overland Park Municipal Code requires that the Open Spaces shall have only the following permitted uses:

1. Low-impact passive uses include conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow), agricultural uses as defined by Section 18.110.040, village/central greens, neighborhood squares, common areas, picnic areas, community gardens, walking trails, bikeways, other kinds of pathways, cemeteries, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Planning Commission and Governing Body.

2. Active recreation uses (no more than 50 percent of the required open space lands) include recreational playing fields, golf courses, playgrounds, tennis courts, neighborhood pools, clubhouse structures, equestrian facilities, and parking lots provided such areas do not consume more than half of the minimum required open space land. Recreational playing fields, playgrounds, and tennis courts shall not be located within 100 feet of abutting properties. Parking facilities shall generally be unlighted, and provide no more than ten (10) parking spaces.

WHEREAS, in order to insure that the Open Spaces are not developed in the future, it is necessary to establish binding covenants and restrictions applicable to the Open Spaces pursuant to Chapter 18.176 of the Overland Park Municipal Code.

NOW, THEREFORE, in consideration of the premises contained herein, the Developer, for itself and its future grantees and owners of the Property, and the City hereby agree as follows:

1. The Developer agrees to maintain the Open Spaces in a neat and attractive condition in compliance with all applicable laws, ordinances, rules and regulations, in perpetuity. An open space maintenance agreement may be submitted which details the maintenance of open space lands for those areas that will be cultivated with native plantings. (Attached and incorporated herein by reference when applicable.)
2. The Developer agrees to limit uses of the Open Spaces to those permitted by Chapter 18.176 of the Overland Park Municipal Code (as set forth above) and to not develop or improve any of the Open Spaces with any residence or other improvement not permitted by Chapter 18.176 of the Overland Park Municipal Code.
3. The City shall have the right to enforce, by any proceeding at law or in equity, each covenant and restriction imposed by the provisions of this Agreement. The City shall have the right to include in its claim for relief a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonable incurred in enforcing its rights herein. Failure by the City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
4. If, after reasonable notice to the Developer, the Developer fails to maintain the Open Spaces as set forth herein and other applicable legal requirements, the City may perform all necessary repair or maintenance work, and the City may assess the Developer and the Property for the cost of the work and any applicable penalties. For the purposes of this Agreement, "reasonable notice" shall consist of thirty (30) days prior written notice sent to the Developer, unless there are exigent circumstances requiring either immediate or shorter response than said thirty (30) days would provide, in which case the notice provided shall be whatever is reasonable under those circumstances. The Developer does herein grant the City, its agents and contractors, a right of entry on the Property for the purpose of inspecting, installing, maintaining, or repairing the Open Spaces, and shall execute any documents deemed necessary by the City, if any, relating thereto.

The City may record an Affidavit of Nonpayment of Maintenance Charges with the Office of Records and Tax Administration for Johnson County, Kansas, stating: (a) the legal description of the property(ies) upon which the lien is claimed; (b) the name(s) of the owner(s) of said property as last known to the City; and (c) the amount of the maintenance charge which is unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon said property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public chargers as are by applicable law made superior.

5. These covenants and agreements as set forth herein, fully executed, shall be filed at the Developer's expense with the office of Records and Tax Administration for Johnson County, Kansas; and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Developer of these covenants and agreements running with the land and notice of all stipulations made hereto. The City and the Developer shall each receive a duly executed copy of this Agreement for its official records. This Agreement may not be amended or modified in any way without the prior written approval of the authorized officials of the City, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this Agreement.

Notwithstanding other provisions of this Agreement placing rights, duties, obligations and responsibilities on the Developer, as that term is defined herein, those rights, duties, obligations and responsibilities shall only be exercised or enforced in the following manner. When the Property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Homes Association takes over ownership of the Open Spaces, those rights, duties, obligations and responsibilities shall succeed to that Homes Association as provided in the legal documents creating the same. It is not the intent of this Agreement to create or impose any rights, duties, obligations and responsibilities directly on subsequent owners of individual lots within the subdivision, unless or until the Homes Association is unwilling or unable to exercise or comply with and enforce the terms of this Agreement and fully meet all duties, obligations and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this Agreement by all means specified in the documents creating the Homes Association, including assessment of individual lot owners when necessary. If that Homes Association shall cease to exist or be in default of its duties, obligations or responsibilities as set forth herein, the City shall have the option of directly enforcing them against individual owners of lots within the subdivision.

6. This Agreement shall be binding upon the Developer and its respective successors and assigns, including all future grantees and owners of the Property, in whole or in part.
7. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

CITY:

CITY OF OVERLAND PARK, KANSAS

DEVELOPER:

By: _____
Carl Gerlach, Mayor

By: _____

ATTEST:

Elizabeth Kelley, City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, who is personally known to me to be the same person who executed the foregoing instrument of writing as _____ on behalf of _____ and said person duly acknowledged the execution of the same to be the act and deed of such company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:

Notary Public

[SEAL]

Print Name: _____