

CITY OF TOPEKA CONTRACT NO. _____

DEVELOPMENT AGREEMENT

between

THE CITY OF TOPEKA, KANSAS

and

911 Walnut, Inc.

for implementation of the

**SW 32nd Terrace and SW Topeka Boulevard
COMMUNITY IMPROVEMENT DISTRICT
&
TAX INCREMENT FINANCE PROJECT PLAN**

DATED AS OF _____, 2023

DEVELOPMENT AGREEMENT

SW 32nd Terrace and SW Topeka Boulevard COMMUNITY IMPROVEMENT DISTRICT

&

TAX INCREMENT FINANCE PROJECT PLAN

This Development Agreement dated as of _____, 2023, for implementation of the SW 32nd Terrace and SW Topeka Boulevard Community Improvement District and the SW 32nd Terrace and SW Topeka Boulevard Tax Increment Financing Redevelopment Project Plan (911 Walnut, Inc.), which are located in the boundaries of the SW Topeka Boulevard Tax Increment Financing Redevelopment District (the “Agreement”), is entered into by and between the **CITY OF TOPEKA, KANSAS**, a municipal corporation (the “City”), and **911 Walnut Inc.**, a Missouri corporation (the “Developer”) (collectively referred to as the “Parties”).

WHEREAS, the Developer has proposed the redevelopment of approximately 5.05 acres at the southwest corner of SW 32nd Terrace and SW Topeka Boulevard (the “Project Area”) to permit construction of multiple commercial buildings, which Developer anticipates (subject to market demand by end-users) will include two new stand-alone restaurant buildings and a multi-tenant strip retail building collectively comprising approximately 20,000 sf of newly constructed commercial space along with associated infrastructure including but not limited to surface parking, landscaping, signage, lighting, utilities, storm water improvements, sidewalks/walkways, streets/drives, and other associated infrastructure improvements (the “Project”). The Developer’s estimated budget for the Project is approximately \$15.1 million in total development cost (\$15,093,891), including costs paid by eventual users of the Project; and

WHEREAS, the Developer has filed a petition with the City to establish the SW 32nd Terrace and SW Topeka Boulevard Community Improvement District to impose a special Two Percent (2%) sales tax within the boundaries of the CID to assist with funding the costs of redevelopment and development within the Project Area; and

WHEREAS, the City, following a properly noticed public hearing, established the CID District by adoption of the CID Ordinance No. _____ on June 13, 2023; and

WHEREAS, the City, following a properly noticed public hearing, established the South Topeka Redevelopment District by adoption of the TIF Ordinance No. 20378 on October 11, 2022, which set a base value for property tax within the boundaries of the TIF District, to assist with funding the costs of development within the Project Area; and

WHEREAS, the City, following a properly noticed public hearing, adopted the TIF Project Plan pursuant to Ordinance No. _____ on June 13, 2023; and

WHEREAS, the Developer and the City anticipate that the Project will provide significant economic benefits to the City and other political subdivisions, including paying real property taxes to the City and other taxing subdivisions and generating retail sales tax revenues for the City and other entities collecting retail sales taxes; and

WHEREAS, entering into this Agreement serves the public purpose of enabling the Developer to proceed with the Project, thereby increasing economic development in the City and adding to the existing tax base within the City; and

WHEREAS, the City and the Developer desire to enter into this Agreement for the Project to provide the terms and conditions for payment and/or reimbursement of the Project Costs.

NOW THEREFORE, to improve, maintain and revitalize commercial activity in the City by assuring opportunities for redevelopment and attracting sound and stable commercial growth, to promote the public interest, to create new jobs in the City, to enhance the tax base of the City and to induce the Developer to undertake the Project, and in consideration of the premises and mutual covenants and agreement herein set forth, the City and the Developer do hereby covenant and agree as follows:

Section 1

Definitions of Words and Terms

In addition to words and terms defined elsewhere herein, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Act. Unless the context shall otherwise indicate, words importing the singular number shall include the plural, and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“Affiliate” means an entity in which management authority or majority ownership is possessed by Sterling Scott, Black Scott, or Terrie Scott, whether individually or through a trust or other entity in which either of these individuals, trusts, or entities possesses majority ownership or management authority.

“CID Act” means K.S.A. 12-6a26 *et seq.* as amended and supplemented from time to time.

“CID Commencement Date” means January 1, 2025.

“CID District” means the SW 32nd Terrace and SW Topeka Boulevard Community Improvement District established by the City pursuant to the CID Ordinance, which contains within its boundaries the real property legally described and generally depicted in *Exhibit A*.

“CID Eligible Project Cost” means the costs of the Project described in the column labeled “CID Eligible Project Costs” on *Exhibit G*, plus Reimbursable Interest, which are eligible to be paid or reimbursed pursuant to the CID Act and in accordance with this Agreement; provided, however: (i) land acquisition costs shall be CID Eligible Project Costs only to the extent they are limited to actual, documented costs for bona fide arm’s length purchase transactions with unrelated parties and a cumulative amount of no more than \$250,000 plus Reimbursable Interest may be reimbursed from the CID and/or TIF; (ii) costs described in KSA 12-6a27(m)(2) through and including KSA 12-6a27(m)(8) shall not be CID Eligible Project Costs.

“CID Ordinance” means Ordinance No. _____ passed by the Governing Body of the City on June 13, 2023, authorizing the creation of the Community Improvement District and levying the CID Sales Tax, as amended from time to time.

“CID Sales Tax” means the Two Percent (2%) special Community Improvement District Sales Tax levied within the District and collected pursuant to K.S.A. 12-6a31, as amended.

“CID Sales Tax Fund” means that fund held in the City’s treasury into which proceeds of the CID Sales Tax are deposited. The City may designate a name for such fund on its books and records at its discretion.

“CID Taxpayers” means any individual or business located in the CID District and required to remit sales and use tax to the Kansas Department of Revenue (and its successors).

“CID Term” means a term commencing on the CID Commencement Date and ending on the date twenty-two (22) years following the CID Commencement Date (i.e., January 1, 2047). In no event shall any deposits be made to the CID Sales Tax Fund after the expiration of the CID Term.

“City” means the City of Topeka, Kansas.

“City Clerk” means the duly appointed City Clerk of the City of Topeka, Kansas.

“Department of Revenue” means the Department of Revenue of the State of Kansas and any successor.

“Developer” means 911 Walnut, a Missouri corporation, and its successors and assigns.

“Excusable Delays” means the delays for performance set forth in Section 14(f) herein.

“Governing Body” means the governing body of the City.

“Maximum Reimbursement Amount” means Three Million Two Hundred and Five Thousand Dollars and NO/100 (\$3,205,000.00), plus Reimbursable Interest.

“Parties” means, collectively, the City and the Developer.

“Petition” means the petition requesting the creation of the SW 32nd Terrace and SW Topeka Boulevard Community Improvement District filed with the City Clerk on April 13, 2023.

“Pad Restaurant” means a high-demand restaurant that either has no current presence or no more than one other location in Topeka, except as otherwise approved by the City in its sole discretion.

“Placed in Service Date” means not later than June 30, 2025 with respect to the Pad Restaurants and December 31, 2026 with respect to the multi-tenant strip retail building or other building or buildings on the remainder of the Project Area.

“Project” has the meaning set forth in the first Recital.

“Project Area” means Project Area within the TIF District as described in the TIF Project Plan and as further described in the legal description and boundary map attached hereto as ***Exhibit C***.

“Project Costs” means all the costs and expenses of the Project, as more specifically estimated in ***Exhibit G***, which are attached hereto and incorporated herein by this reference.

“Public Finance Proceeds” means the CID Sales Tax and the TIF Property Tax.

“Reimbursement Funds” means the CID Sales Tax Fund and the TIF Fund.

“Reimbursable Interest” means an amount equal to six percent (6%) per annum multiplied by the amount of unreimbursed CID Eligible Project Costs and TIF Eligible Project Costs from the time such costs are paid until they are reimbursed with CID or TIF revenues hereunder. Reimbursable Interest is non-compounding.

“State” means the State of Kansas.

“TIF Act” means K.S.A. 12-1770 *et. seq.*, as amended and supplemented from time to time.

“TIF Commencement Date” means the date upon which the Topeka Governing Body approves the TIF Project Plan.

“TIF District” means the South Topeka Redevelopment District adopted in Ordinance No. 20378 which contains within its boundaries the real property legally described and generally depicted in ***Exhibit B***.

“TIF Eligible Project Cost” means the costs of the Project described on ***Exhibit G***, plus Reimbursable Interest, which are eligible to be paid or reimbursed pursuant to the Act and in accordance with this Agreement; provided, however: (i) land acquisition costs shall be TIF Eligible Project Costs only to the extent they are limited to actual, documented costs for bona fide arm’s length purchase transactions with unrelated parties and a cumulative amount of no more than \$250,000 plus Reimbursable Interest may be reimbursed from the TIF and/or CID.

“TIF Fund” means that fund held in the City’s treasury as required by KSA 12-1775(b)(2) into which proceeds of the TIF Property Tax is deposited. The City may designate a name for such fund on its books and records at its discretion.

“TIF Ordinance” means Ordinance No. 20378 passed by the Governing Body of the City on October 11, 2022, authorizing the creation of the Tax Increment Finance District, as amended from time to time.

“TIF Project Plan” means that project plan conforming to KSA 12-1772 and adopted by Ordinance No. _____ passed by the Governing Body on June 13, 2023 and included as ***Exhibit H***.

“TIF Project Plan Ordinance” means Ordinance No. _____ passed by the Governing Body of the City on June 13, 2023, approving the TIF Project Plan, as amended from time to time.

“TIF Property Tax” means the real property taxes attributable to the increase in the current assessed valuation over the base assessed valuation of the real property from the Project Area during the TIF Term, as determined in accordance with the TIF Act. The base assessed valuation of only the real property within the Project Area shall be utilized to calculate the TIF Property Tax increment available to reimburse the Developer for TIF Eligible Project Costs which the parties agree to be \$223,896.

“TIF Term” means a term commencing on the TIF Commencement Date and ending on the date twenty (20) years following the TIF Commencement Date. In no event shall any deposits be made to the TIF Fund after the expiration of the TIF Term.

Section 2

District Formation and Purpose

Pursuant to the CID Act and TIF Act, as well as the proceedings of the City, including the CID Ordinance, the TIF Ordinance, and the TIF Project Plan Ordinance, the City has authorized the creation of the CID District and TIF District and has approved the TIF Project Plan. The purpose of creating the CID District and TIF District and approving the TIF Project Plan is to provide the Developer with an economic incentive to undertake the Project and to provide for further economic development of the City. The purpose of this Agreement is to outline the rights, duties and obligations of the Parties as they relate to the CID District and TIF District and to provide for the reimbursement to the Developer of the CID Eligible Project Costs from the proceeds of the CID Sales Tax and TIF Eligible Project Costs from the TIF Property Tax, in accordance with the further terms of this Agreement.

Section 3

Representations of the Parties

(a) The City is a municipal corporation organized under the laws of the State. The City is authorized pursuant to the CID Act to create the CID District and levy the CID Sales Tax and the TIF Act to create the TIF District and approve the TIF Project Plan; to enter into this Agreement and to perform the duties and obligations of the City contained herein. The Governing Body has previously passed the TIF Ordinance and has taken all requisite action to pass the CID Ordinance and the TIF Project Plan Ordinance, which, when they each become effective: 1) create the CID District and levy the CID Sales Tax and 2) and approve the TIF Project Plan. This Agreement constitutes a valid and binding obligation of the City in accordance with its terms and conditions.

(b) The Developer is a corporation duly organized and existing under the laws of Missouri. The Developer has taken all requisite action under its organizational documents to authorize the execution of this Agreement and to perform the duties and obligations of the Developer contained herein. The Agreement constitutes a valid and binding obligation of the Developer in accordance with its terms. Throughout the term of this Agreement, the Developer agrees to maintain its status as such an entity, in good standing and authorized to do business in the State.

Section 4

Project Costs

(a) A description of the scope of the Project, the estimated Project Costs, the estimated CID Eligible Project Costs and the estimated TIF Eligible Project Costs, as submitted by the Developer, are set forth on *Exhibit G*.

(b) The Parties agree that the amount of the Project Costs may be adjusted by the Developer among any of the stated categories, without the consent of the City, except for as follows:

(1) The Parties agree that the amounts of CID Eligible Project Costs as shown on *Exhibit G* may not be increased by the Developer for the following categories: land acquisition, legal & development fees, and legal/lease concession.

(2) The Parties agree that the amounts of TIF Eligible Project Costs as shown on *Exhibit G* may not be increased by the Developer for the following categories: land acquisition, legal & development fees, and legal/lease concession.

Section 5

Funding of Project

The Project Costs will be paid and then reimbursed through pay-as-you-go-financing under the CID Act and TIF Act. The City will not advance any City funds for the payment of any Project Costs and will not provide any financing, including the issuance of any bonds or notes. Reimbursement to the Developer shall be made in accordance with Section 7 of this Agreement.

Section 6

Reimbursement of City Costs; Administration of CID Sales Tax, Administration of TIF Property Tax

(a) As required by City policy, the Developer shall be responsible for paying all costs necessary to comply with state law, including but not limited to: costs of legal publication notices, resolutions and ordinances. As outlined in the Funding Agreement dated March 12, 2023, the Developer shall also reimburse the City for reasonable expenses associated with review and evaluation of the Petition and this Agreement by the City's financial advisor. Developer payments under this Section 6(a) shall be considered to be CID Eligible Project Costs or TIF Eligible Project

Costs. The Developer shall pay such costs as required under this Section 6(a) as outlined in the Funding Agreement.

(b) Subject to, and as specified by, the terms and conditions of this Agreement, the City agrees to perform, or provide for the performance of, the administration of the reimbursement of the CID Eligible Project Costs. On or before [], the City shall provide notification to the Department of Revenue to commence the collection and reporting of the CID Sales Tax within the District in accordance with the provisions of the CID Act. The imposition of the CID Sales Tax shall commence on January 1, 2025, or as soon thereafter as the Department of Revenue begins the collection of the CID Sales Tax, and shall expire at the end of the CID Term. Notwithstanding this subsection (b), if no CID Eligible Project Costs remain unreimbursed, the City may repeal the CID Ordinance prior to the expiration of the CID Term if the Governing Body determines that the CID Sales Tax is no longer required to pay for such CID Eligible Project Costs.

(c) Pursuant to the CID Act, the City shall establish the CID Sales Tax Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in accordance with this Agreement and the Act. Revenues collected from the CID Sales Tax, and received by the City from the Department of Revenue during the CID Term, shall be deposited periodically in the CID Sales Tax Fund, but not less than monthly.

(d) The City shall impose and collect a fee for the administration of the CID Sales Tax. On the 15th day of each month (or the next business day if such day shall not be a normal business day of the City) of each year during the term of this Agreement, the City shall withdraw from the CID Sales Tax Fund an amount equal to Two Percent (2%) of the aggregate deposits to the CID Sales Tax Fund.

(e) Subject to, and as specified by, the terms and conditions of this Agreement, the City agrees to perform, or provide for the performance of, the administration of the reimbursement of the TIF Eligible Project Costs. The commencement of the TIF Property Tax collections shall commence the first business day following the TIF Commencement Date or as soon thereafter as the Shawnee County Treasurer begins the collection of the TIF Property Tax, and shall expire at the end of the TIF Term. Notwithstanding this subsection (e), if no TIF Eligible Project Costs remain unreimbursed, the City may repeal the TIF Project Plan Ordinance prior to the expiration of the TIF Term if the Governing Body determines that the TIF Project Plan is no longer required to pay for the TIF Eligible Project Costs.

(f) Pursuant to the TIF Act, the City shall establish the TIF Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in accordance with this Agreement and the TIF Act. Proceeds of the TIF Property Tax received by the City from the Shawnee County Treasurer shall be deposited periodically in the TIF Fund, but not less than twice a year.

(g) The City shall impose and collect a fee for the administration of the TIF Property Tax. On the 15th day of each month (or the next business day if such day shall not be a normal business day of the City) of each year during the term of this Agreement, the City shall withdraw from the TIF Fund an amount equal to Two Percent (2%) of the aggregate deposits to the TIF Fund.

Section 7

Reimbursement Procedures

Reimbursement of CID Eligible Project Costs and TIF Eligible Project Costs is conditioned upon the following:

(a) Not more frequently than once per calendar month, the Developer may submit to the Director of Financial and Administrative Services (“Director”) a Certification of Expenditures (in substantially the form attached to this Agreement as *Exhibit E and Exhibit F*, which are attached hereto and incorporated herein by this reference) signed by the Developer, with supporting documentation identifying the CID Eligible Project Costs and/or TIF Eligible Project Costs for which the Developer seeks reimbursement. The supporting documentation shall include: copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfers or other cash payments by the Developer for Project Costs, lien waivers or other evidence that no mechanic’s liens exist with respect to the construction of the Project for which reimbursement is sought and such other documentation as the City shall reasonably request.

(b) Each Certificate of Expenditures shall contain a certification by the Developer that each Project Cost submitted for reimbursement is a CID Eligible Project Cost and/or a TIF Eligible Project Cost, that such expense has been incurred, and that such expense has not been previously submitted for reimbursement from the same fund or subaccount, as applicable, hereunder. The City reserves the right to have its engineer or other agents or employees inspect all work associated with a submitted Certification of Expenditure, to retain an outside accountant, engineer or attorney to evaluate and assist with processing Certifications of Expenditures for compliance with this Agreement (with the reasonable costs of such outside accountant, engineer or attorney paid from the TIF Fund, so long as the City provides notice to the Developer of the expense to be incurred at least fifteen (15) days prior to such expenditure), to examine the Developer’s records relating to all CID Eligible Project Costs and/or TIF Eligible Project Costs to be paid and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

(c) The City shall have fifteen (15) days after receipt of any completed and executed Certification of Expenditure to review and respond by written notice to the Developer; provided, however, that the City may, prior to the end of such fifteen (15) day period, advise the Developer if additional time is needed to review and respond to such Certificate, in which event the City shall respond by the extended date so indicated, which date shall not be more than thirty (30) days after the date of such notice. If, in the reasonable judgment of the officer or agent of the City charged with reviewing each Certification of Expenditure, the submitted documentation demonstrates that: (1) the payments requested in the Certification of Expenditure are for CID Eligible Project Costs and/or TIF Eligible Project Costs; (2) the expense was incurred; (3) the Developer is not in default under this Agreement; (4) the ad valorem property taxes for property owned by the Developer within the CID District and the TIF District are current; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditure, and, if there are sufficient funds available in the Reimbursement Funds as set forth herein, make, or cause to be made, reimbursement to the Developer at the time set forth in subsection (d) of this Section. If the City

disapproves the Certification of Expenditure, the City shall notify the Developer, in writing, of the reason(s) for such disapproval within such fifteen (15) day period (or such extended period as provided herein). The City will provide reasonable assistance to the Developer so that the Developer can take the steps necessary to rectify the reason for the City's disapproval and resubmit such Certificate of Expenditure for approval by the City. However, if only certain line items on the Certification of Expenditure are disapproved and others are approved, if there are sufficient funds available in the Reimbursement Funds as set forth herein, the City shall make, or cause to be made, reimbursement for the line items of the Certification of Expenditure approved by the City from Reimbursement Funds. The Developer agrees to make a good faith effort to submit thorough and complete Certifications of Expenditures. The Developer may appeal a denial of one or more items of a Certification of Expenditure in accordance with the administrative appeal process defined in the Topeka Municipal Code.

(d) (i) Subject to the further terms of this Agreement, and to the extent moneys are available in the CID Sales Tax Fund or TIF Fund, any requested reimbursement approved by the City pursuant to this Section 7 shall be paid to the Developer through the City's regular accounts payable process from the CID Sales Tax Fund or TIF Fund; provided, however, that no deposits shall be made to the CID Sales Tax Fund and TIF Fund after the expiration of the CID Term or the TIF Term, respectively. All amounts deposited in the CID Sales Tax Fund and TIF Fund prior to the expiration of the CID Term and TIF Term, respectively, shall be used to reimburse the Developer for CID Eligible Project Costs and TIF Eligible Project Costs, regardless if the reimbursement occurs after the expiration of the CID Term or TIF Term.

(e) Notwithstanding any other provision herein, the City shall never make any payments pursuant to this Section exceeding the Maximum Reimbursement Amount.

Section 8

City and Other Governmental Permits

Before beginning construction of any aspect of the Project, the Developer shall, at its expense, obtain or cause to be obtained any necessary planning documents, permits or licenses that may be required by the City, Shawnee County or any other governmental agency having jurisdiction over the Project. The Developer shall adhere to the recorded PUD Master Plan in Ordinance No. 20332 approved by the Governing Body and all amendments thereto.

Section 9

Reporting

(a) From and after the commencement of this Agreement, the Developer shall cause all CID Taxpayers that enter into leases with Developer following the Effective Date or become fee simple owners of any portion of the Project, at the request of the Director, not later than the 15th day of each month, to provide copies of any sales tax filings required to be submitted to the Department of Revenue for the next preceding month (or the next preceding quarter if such taxpayer is a quarterly filer). Provided the Developer can demonstrate that it made commercially reasonable efforts to ensure CID Taxpayer compliance with this Section 9(a), failure to obtain such compliance will not be considered a default of the Development under this Agreement. The

Developer shall demonstrate it has made commercially reasonable efforts to ensure CID Taxpayers provide copies of such filings to the Director by imposing a requirement in any lease of property located within the CID District that if the tenant is a CID Taxpayer it shall provide this information to the Director not later than the 15th day of each month for the next preceding month (or the next preceding quarter if such taxpayer is a quarterly filer). The parties acknowledge that a failure by CID Taxpayers to properly report sales tax filings may make it impossible for the City to deposit proceeds of the CID Sales Tax in the CID Sales Tax Fund; the City's inability to do so shall not be a default by the City under this Agreement.

(b) Not later than January 25th of each year, commencing January 25, 2024, and ending January 25, 2046, the Developer, or any third-party developer(s) of any portion of the Project in which Developer has delegated such reporting obligations discussed herein, shall provide to the Director a reporting, as of December 31st of the next preceding year, of: (i) annual and cumulative Project Costs incurred by Developer or any third-party developer(s) of any portion of the Project; (ii) Project Costs funded by Developer or any third-party developer(s) of any portion of the Project with sources other than reimbursements from the Reimbursement Funds; (iii) the remaining amount of unreimbursed CID Eligible Project Costs incurred by Developer or any third-party developer(s) of any portion of the Project; and (iv) proof of insurance as provided in Section 11 herein. Such reporting shall be in the form of the Project Budget attached hereto as **Exhibit G**, and such reporting shall no longer be required after Developer or any third-party developer(s) have completed the Project.

(c) Not later than January 25th of each year, commencing January 25, 2024, and ending January 25, 2044, the Developer, or any third-party developer(s) of any portion of the Project in which Developer has delegated such reporting obligations discussed herein, shall provide to the Director a reporting, as of December 31st of the next preceding year, of: (i) annual and cumulative Project Costs incurred by Developer or any third-party developer(s) of any portion of the Project; (ii) Project Costs incurred by Developer or any third-party developer(s) of any portion of the Project and funded with sources other than reimbursements from the Reimbursement Funds; (iii) the remaining amount of unreimbursed Developer-incurred TIF Eligible Project Costs; and (iv) proof of insurance as provided in Section 11 herein. Such reporting shall be in the form of the Project Budget attached hereto as **Exhibit G**, and such reporting shall no longer be required after Developer or any third-party developer(s) have completed the Project.

(d) The City shall use commercially reasonable efforts for collecting, accounting for and remitting CID Sales Tax to the CID Sales Tax Fund upon receipt of such amounts from the Kansas Department of Revenue.

Section 10

Rights of Access

For purposes of insuring compliance with this Agreement, representatives of the City shall have rights of access to the Project, without charges or fees, during normal business hours during the period of Project construction, to inspect work performed or being performed in the construction of the Project. City representatives shall carry proper identification, insure their own safety and shall not interfere with construction activity unless such activity is apparently in

violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Project in the exercise of its proper authority to regulate, and provide for, public safety and to issue and enforce required licenses and permits.

Section 11

Insurance and Indemnification

(a) The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Developer shall give the City immediate written notice of any claim, suit or demand that may be subject to this provision. The City shall also give prompt notice to the Developer of any such claim, suit, or demand, and the City hereby agrees that it shall not defend, settle or otherwise resolve any such claim, suit, or demand without prior notice to the Developer. After receipt of such notice, the Developer shall defend, contest, or otherwise protect the City against any such matter, at the cost and expense of the Developer, utilizing counsel selected by the Developer. This section shall not apply to negligence or willful misconduct of the City or its officers, employees, or agents.

(b) Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the term of this Agreement and during all phases of the development described herein, to the extent Developer holds fee title to property within the District, insure and keep insured any vertical structures built in the District against direct loss or damage occasioned by fire, flood and extended coverage perils through insurers with an AM Best rating of no less than "A" and/or a rating that is acceptable to the City without co-insurance. The insurance shall be for an amount that is not less than the full replacement cost of such structures. In the event that a portion of the property is sold and purchaser is assigned a portion of the TIF and/or CID reimbursement rights hereunder, a requirement of the sale shall be that, as a condition to receiving reimbursement hereunder, the purchaser agree to insure and keep insured any vertical structures built in the District against direct loss or damage occasioned by fire, flood and extended coverage perils through insurers with an AM Best rating of no less than "A" and/or a rating that is acceptable to the City without co-insurance. The insurance shall be for an amount that is not less than the full replacement cost of such structures.

(c) In the event of destruction or damage to any vertical structure owned by the Developer, the Developer shall restore the Project to a clean, safe, and sanitary condition within the time parameters and other terms or provisions identified in any lease agreement with any CID Taxpayer; provided, however, that in all events the Developer shall cause all damaged or destroyed property within the Project to be restored to a clean, safe and sanitary condition within a reasonable period of time after such damage or destruction, not to exceed One Hundred Eighty (180) days. If the Developer has commenced work associated with restoring the damaged or destroyed property within the Project to a clean, safe, and sanitary condition within such 180 day period, but has been unable to complete this work, the Developer may request a 90-day extension from the City to continue and ultimately complete all restoration efforts within Two Hundred Seventy (270) days.

Further reasonable extensions may be requested by the Developer which may be approved by the City in its reasonable discretion, not to be unreasonably withheld. Notwithstanding the foregoing, nothing in this Section shall require the Developer to rebuild or reconstruct any component of the Project damaged or destroyed by casualty or other causes, so long as the Developer restores the Project to a clean, safe, and sanitary condition.

Section 12

Local, State and Federal Laws

The Developer agrees that it shall abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

Section 13

Nondiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the Project, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 14

Default and Remedies

(a) The failure or delay by either of the Parties to this Agreement to perform any term or provision of this Agreement required of such Party, shall constitute an event of default under this Agreement, subject to rights of cure, as specified below.

(b) Notice of an event of default shall be given by the Party claiming such default to the other Party and shall contain the basis of the claimed default.

(c) No legal proceedings against the claimed defaulting Party shall be instituted nor shall the claiming Party be entitled to damages if, within thirty (30) days from the receipt of a notice of claimed default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure, correction or remedy is completed within sixty (60) days of the date such claimed defaulting Party received a notice of default. If the Party claimed to be in default cannot reasonably cure such claimed default within sixty (60) days, the claimed defaulting Party shall notify the other Party of such assertion with a proposed date to complete the cure; and default shall be suspended if the claimed defaulting Party commences curing the default within thirty (30) days after receipt of written notice thereof and diligently prosecutes the cure to completion within the time period set forth in the notice to the Party claiming the default.

(d) In the event the defaulting Party does not cure the event of default as set forth in this Section, the non-defaulting Party shall have the right:

(1) by mandamus or other suit, action or proceedings at law or in equity, to enforce the rights of the non-defaulting Party against the defaulting Party and to require and compel duties and obligations required by the provisions of the Agreement or by the laws of the State;

(2) by suit, action or other proceedings at law or in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the non-defaulting Party; or

(3) to take such other action as necessary to protect the interests of the City, including imposing suspending reimbursements to the Developer from the CID Sales Tax Fund and TIF Fund on a pro rata basis and only as it pertains to any portions of the Project that are in default, which reimbursements may be reinstated following cure of the default.

(e) Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost tax revenue or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party.

(f) 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: war; insurrection; strikes; labor shortages; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; epidemics and quarantine restrictions that cause closures of commercial facilities in Topeka; freight embargoes; unusually severe weather; government delays or prohibitions; market conditions; administrative and permitting delays (which have not been caused by any act or omission of the Developer); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform ("Excusable Delays"). 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. The Developer shall provide notice to the City if and when any such Excusable Delays occur and the Developer may be granted such extensions based upon the period of such Excusable Delays.

(g) Specific Events of Default. In addition to other defaults that might occur pursuant to this Section, the Developer shall be considered to be in default if any of the following occurs:

(1) The Developer commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the Developer takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

(2) If a petition is filed against the Developer under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Developer under any other federal

or state law in effect at the time relating to bankruptcy or insolvency, unless lacking in foundation.

(3) The Developer makes a general assignment for the benefit of creditors.

(4) If a trustee, receiver, custodian or agent of the Developer is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Developer is for the purpose of enforcing a lien against property in the CID District and TIF District or for the purpose of general administration of such property for the benefit of the Developer's creditors.

(5) The Placed in Service Date for a given portion of the Project, in which case, following notice and cure, such default may, at the City's discretion, result in suspension of reimbursement payments using TIF and/or CID revenue generated by such portion of the Project or the City electing to terminate the Agreement with respect to the uncompleted portions of the Project if the portions are not built by the Placed in Service Date.

(6) The Developer does not commence construction of the Project by March 1, 2024. Commencement of construction shall mean the issuance of a building permit or site construction permit for purposes of commencing the Project for at least one portion of the Project.

(7) The Developer fails to restore the Project to a clean, safe, and sanitary condition as required by Section 11 of this Agreement within seventy five (75) days of any damage or destruction of all or a portion of the Project (or within the period as extended by the terms of Section 11).

(8) The Developer fails to make payments required by Section 6(a) of this Agreement in a timely manner.

(9) The Developer authorizes or permits to be included in the Project any of the impermissible end users included in *Exhibit I* hereto, unless approved by the City.

Section 15

Governing Law, Jurisdiction

(a) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the State of Kansas.

(b) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Shawnee County, Kansas or, in the case of federal jurisdiction, in the Federal District Court for the District of Kansas.

Section 16

Rights and Remedies Cumulative, Waivers

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 17

Amendments

This Agreement may be amended by the parties, which amendment shall be in writing and shall not cause the Agreement to be in violation of the Act.

Section 18

Transfer and Assignment

The Parties acknowledge that the Developer's expertise in constructing and managing like projects were material inducements to the City undertaking this Agreement. As such:

(a) The Developer may not assign this Agreement, or the rights, duties, and obligations hereunder without the prior written consent of the City. In determining whether to approve such an assignment, the City will similarly assess the proposed assignee's expertise in constructing and managing like projects and its commitment to Topeka; provided, however, that it shall be unreasonable to disapprove any such assignee if such assignee possesses the requisite financial qualifications and capabilities to perform the duties and obligations contained within this Agreement. The City's consent to any proposed assignment may not be unreasonably withheld.

(b) Notwithstanding the foregoing, the Developer may:

(1) assign or pledge its rights under this Agreement to any Affiliate by giving thirty (30) days' prior written notice to the City of its intent to proceed with such assignment or pledge; and/or

(2) collaterally assign or pledge its rights to payments due hereunder to its lender. The Developer shall provide written notice to the City of such assignment or pledge within one month of execution of the same, addressed to the Topeka City Manager, including a copy of any agreement evidencing such collateral assignment or pledge to such third party.

(c) Nothing herein shall prohibit (or require City 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, however, that such additional development or ownership entities or joint ventures shall be an Affiliate.

(d) Developer is expressly permitted to assign its rights to receive reimbursement for CID Eligible Project Costs pursuant to this Agreement to the fee simple owners of the Pad Restaurants.

Section 19

Notices, Demands, Communications Among Parties

Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing, addressed to the following:

(a) To the City at:

CITY OF TOPEKA, KANSAS
City Hall, Room 355
215 SE 7th Street
Topeka, Kansas 66603
Attn: City Manager

With a copy to:

City Clerk
City Hall, Room 166
215 SE 7th Street
Topeka, Kansas 66603

and

City Attorney
City Hall, Room 353
215 SE 7th Street
Topeka, Kansas 66603

(b) To the Developer at:

911 Walnut, Inc.
C. Sterling Scott
100 NW Englewood Rd.
Kansas City, MO 64118

With a copy to:

Curt Petersen
Polsinelli PC
900 W. 48th Place, Ste 900
Kansas City, MO 64112

Such notice shall be deemed duly given or filed if the same shall be: (i) duly mailed by certified or registered mail, postage prepaid; or (ii) communicated via facsimile, with electronic or telephonic confirmation of receipt. All notices given by: (i) certified or registered mail, postage prepaid, shall be deemed duly given as of the date they are so mailed; and (ii) facsimile, with electronic or telephonic confirmation of receipt, shall be deemed duly given as of the date of confirmation of receipt. The Parties may from time to time designate, by giving notice as set forth above, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 20

Entire Agreement

This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement, including the Exhibits hereto, constitutes the entire agreement and understanding of the Parties. This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement.

Section 21

Electronic Transactions

The transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

Section 22

Severability

The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 23

No Liability of City Officials or Employees

All liabilities under this Agreement on the part of the City and the Developer are solely corporate liabilities of the City and the Developer and no officer, director, employee, or agent of the City or the Developer shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City or the Developer hereunder.

Section 24

Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

CITY OF TOPEKA, KANSAS

(SEAL)

By: _____
Richard U. Nienstedt, Acting City Manager

ATTEST:

By: _____
Brenda Younger, City Clerk

911 Walnut
a Missouri Corporation

By: _____
Sterling Scott, Managing Director

EXHIBIT A
Legal Description and Boundary Map of CID District

LEGAL DESCRIPTION

Part of Lot 1, Nellie M. Mays Subdivision, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, written by Michael A. Adams, P.S. 1126 on this 8th day of June, 2022, described as follows:

Beginning at the Southwest corner of said Lot 1, thence North 00 degrees 29 minutes 37 seconds East a distance of 413.46 feet to a point of curvature; thence on a curve to the left, having a radius of 360.00 feet, a chord which bears North 14 degrees 47 minutes 16 seconds West a distance of 189.77 feet, an arc distance of 192.04 feet to the Southwest corner of a property described in City of Topeka Ordinance No. 15830, Book 2445, Page 071, filed at the Office of the Shawnee County Clerk; thence on the South line of said property described in Book 2445, Page 071 for the following three courses: South 89 degrees 58 minutes 34 seconds East a distance of 41.92 feet; thence North 42 degrees 30 minutes 24 seconds East a distance of 36.17 feet; thence South 89 degrees 58 minutes 34 seconds East a distance of 340.00 feet to the West line of Lot 3, Arlan's Subdivision in the City of Topeka; thence South 00 degrees 34 minutes 47 seconds West a distance of 158.76 feet to the Southwest corner of said Lot 3; thence North 90 degrees 00 minutes 00 seconds East a distance of 127.32 feet to the Southeast corner of said Lot 3; thence South 00 degrees 32 minutes 51 seconds West a distance of 30.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 29.71 feet; thence South 00 degrees 28 minutes 11 seconds West a distance of 209.22 feet to the North line of Lot 1, Block 'A', Perkins Subdivision in the City of Topeka; thence South 89 degrees 58 minutes 44 seconds West a distance of 126.50 feet to the Northwest corner of said Lot 1; thence South 00 degrees 27 minutes 50 seconds West a distance of 225.17 feet to the Southwest corner of said Lot 1; thence South 89 degrees 57 minutes 42 seconds West a distance of 386.59 feet to the point of beginning. This tract contains 6.16 acres of land more or less. Said tract to be recorded as Lot 1, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Part of Lot 1, Nellie M. Mays Subdivision, a Replat, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, written by Travis L. Haizlip, P.S. 1724 on this 31st day of October, 2022, described as follows:

Beginning on the Northeast corner of Lot 1, Nellie M. Mays Subdivision, a Replat; thence South 00 degrees 28 minutes 11 seconds West on the East line of said Lot 1 a distance of 209.06 feet to the Northeast corner of Lot 1, Block 'A', Perkins Subdivision, thence South 89 degrees 58 minutes 44 seconds West on the North line of Lot 1, Perkins Subdivision a distance of 438.52 feet; thence North 00 degrees 28 minutes 11 seconds East a distance of 209.22 feet to the North line of Lot 1, Nellie M. Mays Subdivision, a Replat; thence North 90 degrees 00 minutes 00 seconds East on said North line a distance of 438.52 feet to the point of beginning. This tract contains 2.11 acres of land more or less. Said tract to be platted as Lot 2, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Lot 1, Block A, Perkins Subdivision, in the City of Topeka, Shawnee County, Kansas.

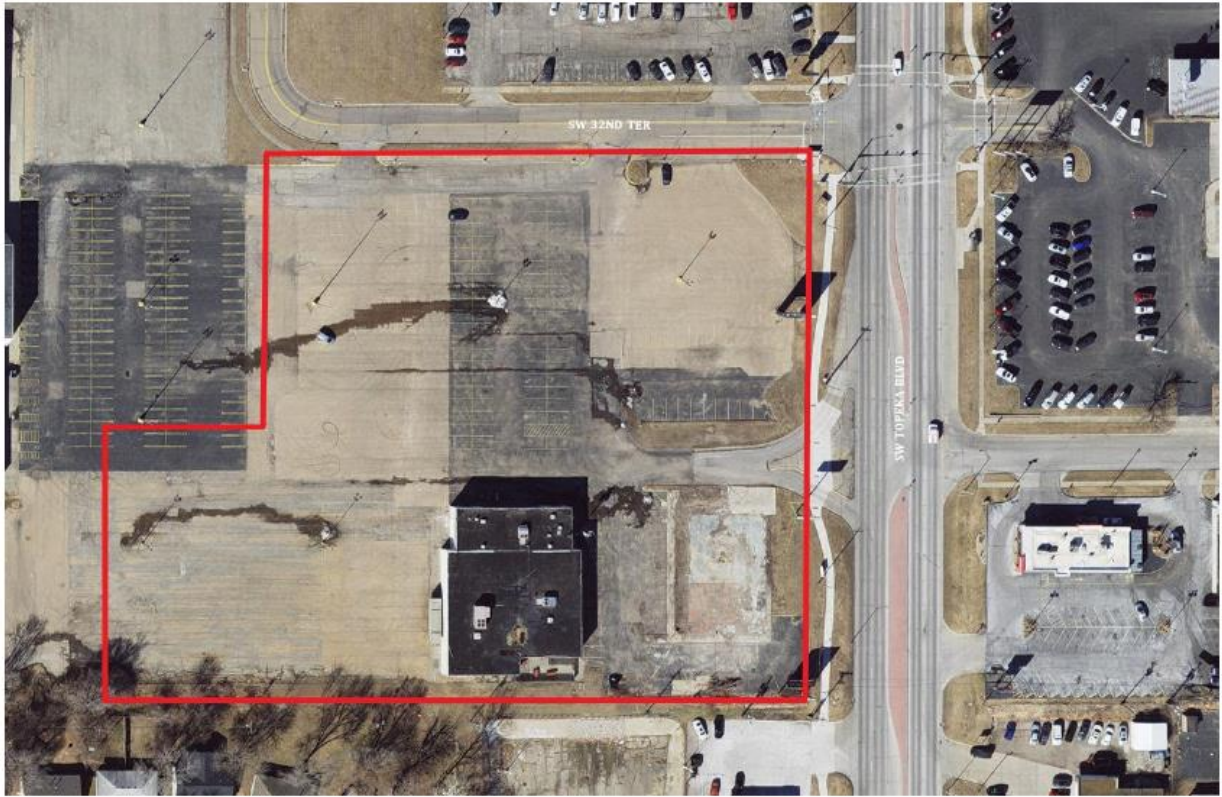


EXHIBIT B
Legal Description and Boundary Map of TIF District

PORTIONS OF THE NORTHWEST QUARTER OF SECTION 19, AND PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 18, IN TOWNSHIP 12 SOUTH, RANGE 16 EAST OF THE SIXTH PRINCIPAL MERIDIAN, AND PORTIONS OF THE SOUTHEAST AND NORTHEAST QUARTERS OF SECTION 13, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN SHAWNEE COUNTY, KANSAS, BOUNDED AS FOLLOWS;

BEGINNING AT THE INTERSECTION OF THE EASTERN RIGHT-OF-WAY LINE OF SW TOPEKA BOULEVARD WITH THE NORTHWEST CORNER OF KTA COMMERCIAL SUBDIVISION; THENCE NORTHERLY ALONG THE EAST RIGHT-OF-WAY LINE TO THE INTERSECTION OF THE EASTERN RIGHT-OF-WAY LINE OF SOUTHWEST TOPEKA BOULEVARD WITH THE NORTH RIGHT-OF-WAY LINE OF SOUTHWEST 37TH STREET; THENCE WESTERLY ALONG THE NORTH RIGHT-OF-WAY LINE OF SOUTHWEST 37TH STREET TO THE SOUTHEAST CORNER OF LOT 1, BLOCK 11 OF LIKINS-FOSTER ADDITION TO THE CITY OF TOPEKA, KANSAS; THENCE NORTHERLY ALONG THE EAST LINE OF LOTS 1 AND 16, BLOCK 11, LIKINS-FOSTER ADDITION, AND THE EAST LINE OF THE SUBDIVISION OF TRACTS E & F, LIKINS-FOSTER ADDITION TO THE CITY OF TOPEKA, KANSAS, TO THE NORTHEAST CORNER OF LOT 11, BLOCK 30, OF THE SUBDIVISION OF TRACTS E & F, LIKINS-FOSTER ADDITION; THENCE WESTERLY ALONG THE NORTH LINE OF SAID BLOCK 30 TO THE EAST LINE OF SOUTHWEST BRENDAN AVENUE, ALSO BEING THE SOUTHWEST CORNER OF BELLAIRRE SUBDIVISION; THENCE NORTHERLY ALONG SAID EAST LINE, TO THE NORTH LINE OF SOUTHWEST CROIX STREET; THENCE EASTERLY ALONG SAID NORTH LINE, TO THE SOUTHWEST CORNER OF TRACT 'A' LIKINS-FOSTER ADDITION, ALSO BEING THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, OF SAID SUBIVISION; THENCE NORTHERLY ALONG THE WEST LINE OF SAID TRACT 'A' TO THE NORTHWEST CORNER OF SAID TRACT 'A', ALSO BEING THE NORTHEAST CORNER OF LOT 1, BLOCK 2, OF LIKINS-FOSTER ADDITION; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LIKINS-FOSTER TO THE NORTHWEST CORNER OF LOT 10, BLOCK 2 OF SAID LIKINS-FOSTER ADDITION AND THE EAST LINE OF SOUTHWEST CLARE AVENUE; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SOUTHWEST CLARE AVENUE TO THE SOUTH LINE OF SOUTHWEST 32ND TERRACE; THENCE EASTERLY ALONG SAID SOUTH LINE, TO THE WEST LINE OF SOUTHWEST FILLMORE STREET; THENCE SOUTHEASTERLY AND SOUTHERLY ALONG SAID WEST LINE TO THE SOUTH LINE OF SOUTHWEST 32ND TERRACE; THENCE EASTERLY ALONG SAID SOUTH LINE TO THE WEST LINE OF SOUTHWEST TOPEKA BOULEVARD; THENCE SOUTHERLY ALONG SAID WEST LINE TO THE SOUTHEAST CORNER OF TRACT 'A' OF LIKINS-FOSTER ADDITION TO THE CITY OF TOPEKA, KANSAS, AND THE NORTH LINE OF SOUTHWEST CROIX STREET; THENCE EASTERLY AND SOUTHEASTERLY ALONG SAID NORTH LINE PROLONGED TO THE EAST LINE OF THE BURLINGTON NORTHERN AND SANTE FE RAILROAD RIGHT-OF-WAY, ALSO BEING THE WEST LINE OF HANRAHAN SOUTH SUBDIVISION; THENCE SOUTHERLY ALONG SAID EAST LINE TO A POINT; THENCE EASTERLY, 325 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID HANRAHAN SOUTH SUBDIVISION TO THE WEST LINE OF THE ABANDONED MISSOURI PACIFIC RAILROAD; THENCE SOUTHWESTERLY ALONG SAID WEST LINE, TO THE PROLONGED SOUTH LINE OF SOUTH TOWN INDUSTRIAL PARK SUBDIVISION; THENCE WESTERLY ALONG SAID SOUTH LINE TO THE WEST LINE OF SAID BURLINGTON NORTHERN AND SANTE FE RAILROAD RIGHT-OF-WAY; THENCE SOUTHWESTERLY ALONG SAID WEST LINE TO THE EASTERLY PROLONGATION OF THE NORTH LINE OF KTA COMMERCIAL SUBDIVISION; THENCE WEST ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

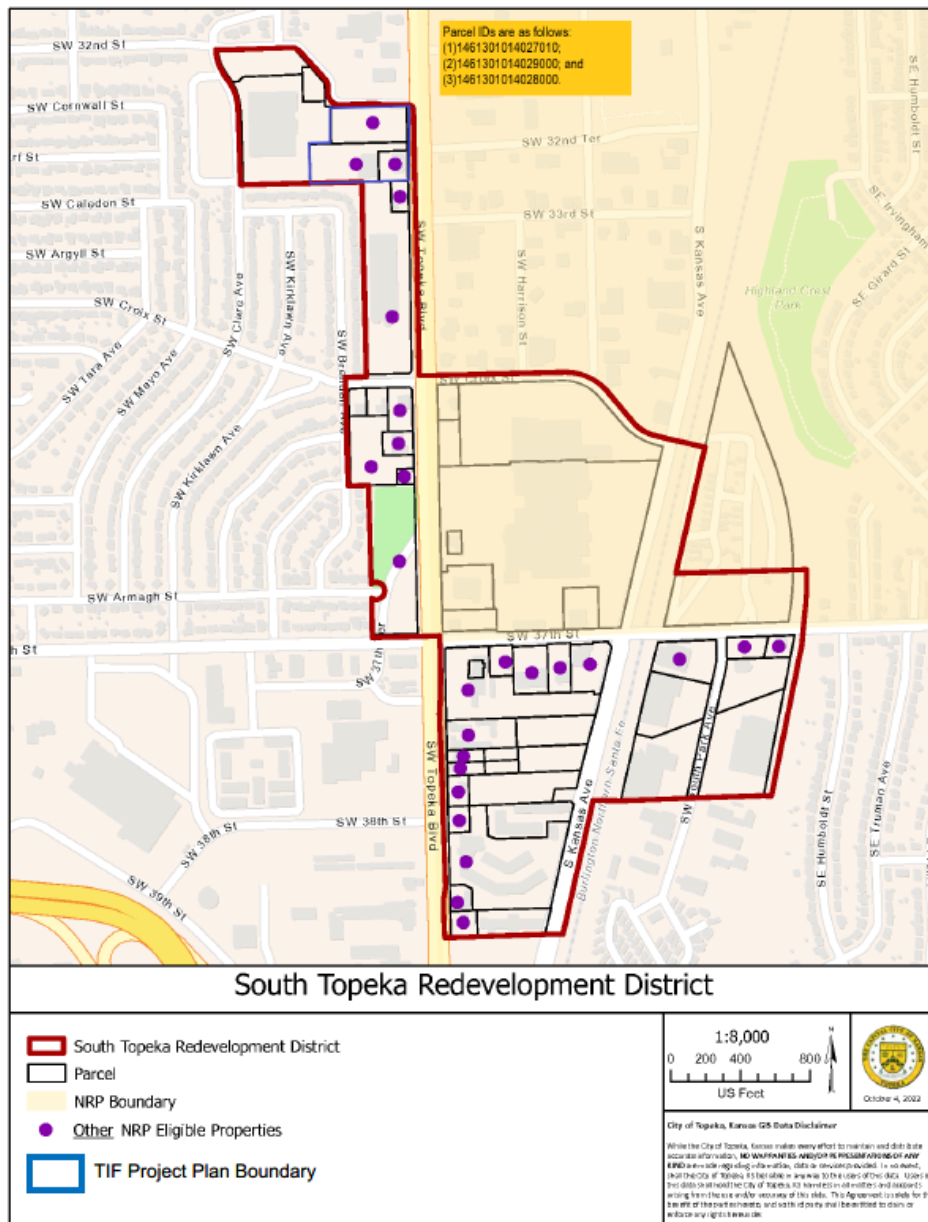


EXHIBIT C
Legal Description and Boundary Map of TIF Project Area

LEGAL DESCRIPTION

Part of Lot 1, Nellie M. Mays Subdivision, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, written by Michael A. Adams, P.S. 1126 on this 8th day of June, 2022, described as follows:

Beginning at the Southwest corner of said Lot 1, thence North 00 degrees 29 minutes 37 seconds East a distance of 413.46 feet to a point of curvature; thence on a curve to the left, having a radius of 360.00 feet, a chord which bears North 14 degrees 47 minutes 16 seconds West a distance of 189.77 feet, an arc distance of 192.04 feet to the Southwest corner of a property described in City of Topeka Ordinance No. 15830, Book 2445, Page 071, filed at the Office of the Shawnee County Clerk; thence on the South line of said property described in Book 2445, Page 071 for the following three courses: South 89 degrees 58 minutes 34 seconds East a distance of 41.92 feet; thence North 42 degrees 30 minutes 24 seconds East a distance of 36.17 feet; thence South 89 degrees 58 minutes 34 seconds East a distance of 340.00 feet to the West line of Lot 3, Arlan's Subdivision in the City of Topeka; thence South 00 degrees 34 minutes 47 seconds West a distance of 158.76 feet to the Southwest corner of said Lot 3; thence North 90 degrees 00 minutes 00 seconds East a distance of 127.32 feet to the Southeast corner of said Lot 3; thence South 00 degrees 32 minutes 51 seconds West a distance of 30.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 29.71 feet; thence South 00 degrees 28 minutes 11 seconds West a distance of 209.22 feet to the North line of Lot 1, Block 'A', Perkins Subdivision in the City of Topeka; thence South 89 degrees 58 minutes 44 seconds West a distance of 126.50 feet to the Northwest corner of said Lot 1; thence South 00 degrees 27 minutes 50 seconds West a distance of 225.17 feet to the Southwest corner of said Lot 1; thence South 89 degrees 57 minutes 42 seconds West a distance of 386.59 feet to the point of beginning. This tract contains 6.16 acres of land more or less. Said tract to be recorded as Lot 1, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Part of Lot 1, Nellie M. Mays Subdivision, a Replat, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, written by Travis L. Haizlip, P.S. 1724 on this 31st day of October, 2022, described as follows:

Beginning on the Northeast corner of Lot 1, Nellie M. Mays Subdivision, a Replat; thence South 00 degrees 28 minutes 11 seconds West on the East line of said Lot 1 a distance of 209.06 feet to the Northeast corner of Lot 1, Block 'A', Perkins Subdivision, thence South 89 degrees 58 minutes 44 seconds West on the North line of Lot 1, Perkins Subdivision a distance of 438.52 feet; thence North 00 degrees 28 minutes 11 seconds East a distance of 209.22 feet to the North line of Lot 1, Nellie M. Mays Subdivision, a Replat; thence North 90 degrees 00 minutes 00 seconds East on said North line a distance of 438.52 feet to the point of beginning. This tract contains 2.11 acres of land more or less. Said tract to be platted as Lot 2, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Lot 1, Block A, Perkins Subdivision, in the City of Topeka, Shawnee County, Kansas.

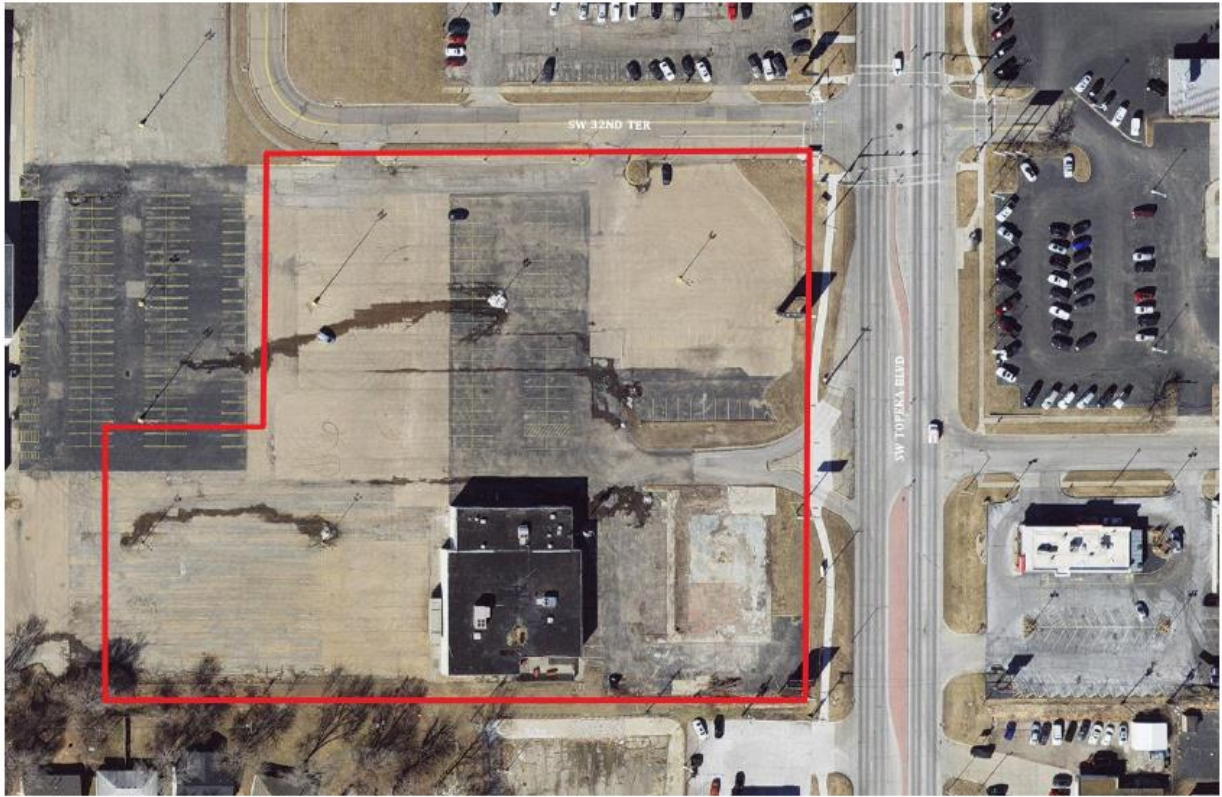


EXHIBIT D **Proposed Project Site Plan**

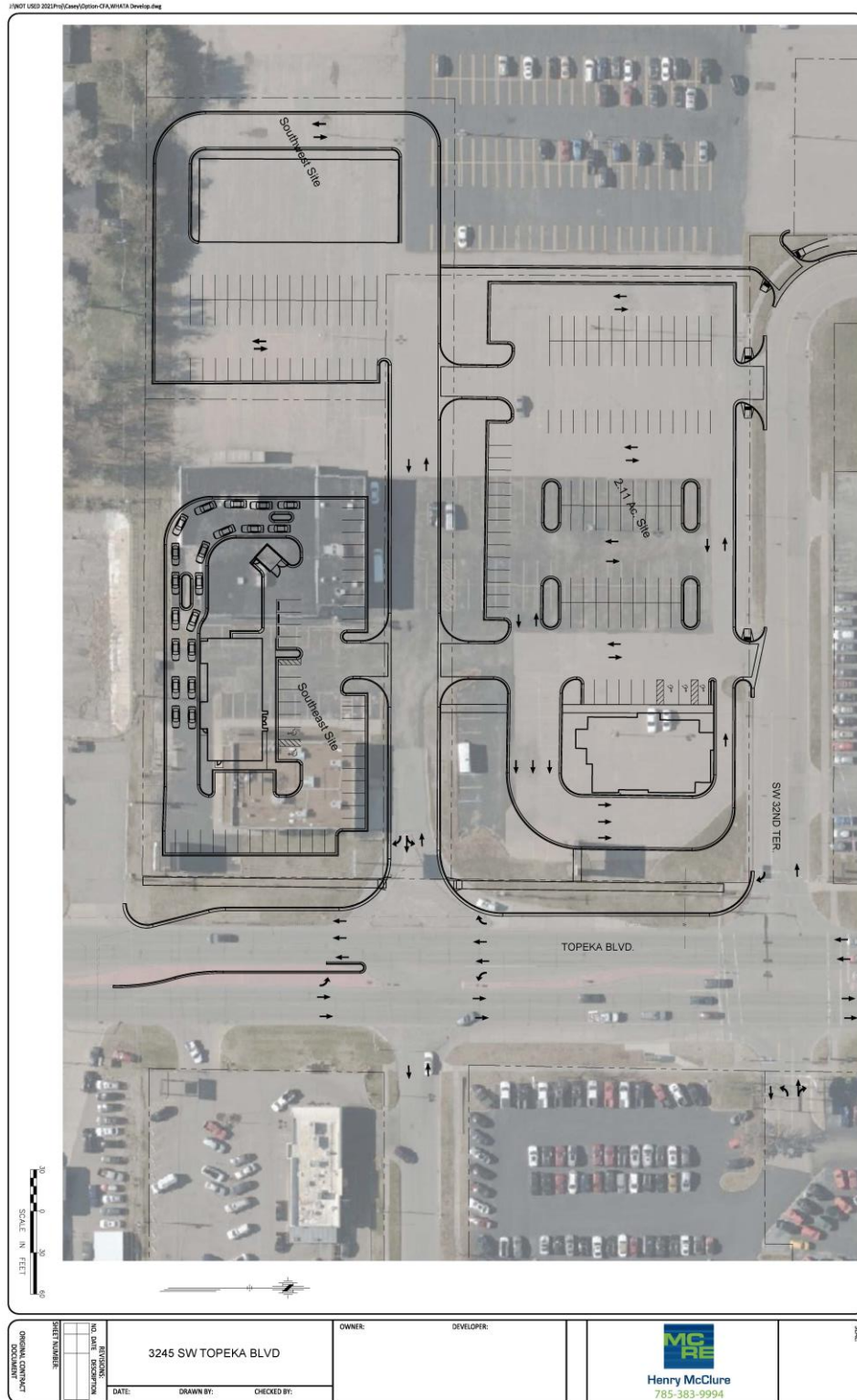


EXHIBIT E
CID Certificate of Expenditures

CERTIFICATION OF EXPENDITURES
SW 32nd Terrace and SW Topeka Boulevard

Date: _____

Certification # _____

City Clerk of the
City of Topeka, Kansas

In accordance with the Development Agreement for the SW 32nd Terrace and SW Topeka Boulevard Project dated _____, 2023, (the “Agreement”), between the City of Topeka, Kansas, (the “City”), and 911 Walnut, Inc., (the “Developer”), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. All amounts are CID Eligible Project Costs (as defined in the Agreement) that are reimbursable to the Developer pursuant to the Agreement and the CID Act, (as defined in the Agreement).
2. All amounts have been advanced by the Developer for CID Eligible Project Costs (as defined in the Agreement) in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous reimbursement under the Agreement from the Reimbursement Funds or request for reimbursement from the CID Fund (as defined in the Agreement).
4. All taxes and assessments currently due on any property owned by the Developer in the City of Topeka have been paid.
5. No uncured Events of Default under the Agreement currently exist.

The Developer further certifies that all insurance policies required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$_____, which amount is itemized on Attachment E-1 attached hereto and which Attachment E-1 includes _____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate. Attached to Attachment E-1 are copies of the contract, invoice or other billing for the CID Eligible Project Costs or which the Developer seeks

reimbursement, along with copies of checks, evidence of wire transfers or other evidence of payment by the Developer of such CID Eligible Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

911 Walnut, Inc.
A Missouri Corporation

By: _____
Name

Title

ATTACHMENT E-1

TO CERTIFICATION OF ELIGIBLE CID PROJECT COSTS (911 WALNUT)



CITY OF TOPEKA
 FINANCIAL SERVICES
 Nickie Lee
 Director of Finance and Administrative Services
 City Hall, 215 SE 7th Street, Suite 358
 Topeka, KS 66603-3914
 Tel: (785) 368-1653

Community Improvement District Reimbursement Request

Submit requests to: City of Topeka Director of Finance and Administrative Services
 215 SE 7th Street, Suite 358
 Topeka, KS 66603 or fax to: 785-368-3975

Submission Date:	_____
City Project Number:	_____
Request Number:	_____

Please visit the following link for CID policies and procedures:
<https://www.topeka.org/finance/community-improvement-tax-increment-financing-districts/>
 Reimbursement is contingent upon sales tax revenue received.
 Minimum reimbursement is \$1,000.00.
 Please include supporting documentation (copies of invoices and checks).

Type *	Vendor Name	Invoice #	Invoice Date	Payment Date	Time period of work	Requested Amount
* Note						
1 = Land Acquisition						
2 = Public Infrastructure						
3 = Relocation Costs						
4 = Demolition						
5 = Site Prep						
6 = Legal and Third Party Reports						
Please use page 2 for additional items.						
Page 1 Total						\$ -

Certification: I certify that the above listed costs are eligible CID costs and were incurred as part of the CID project listed above. Costs have not previously been submitted and they reflect actual costs expended. There are also no outstanding or anticipated liens for the work.

<u>Office Use Only:</u>	
Finance Approval:	_____
Engineering Approval:	_____

Signature: _____

Date: _____

Phone number: _____

[illegible]

1 = Land Acquisition 4 = Demolition
2 = Public Infrastructure 5 = Site Prep
3 = Relocation Costs 6 = Legal and Third Party Reports

\$ -

\$ -

EXHIBIT F
TIF Certificate of Expenditures

CERTIFICATION OF EXPENDITURES
SW 32ND TERRACE AND SW TOPEKA BOULEVARD

Date: _____

Certification # _____

City Clerk of the
City of Topeka, Kansas

In accordance with the Development Agreement for the SW 32nd Terrace and SW Topeka Boulevard Development Project dated _____, 2023 (the “Agreement”), between the City of Topeka, Kansas, (the “City”), and 911 Walnut, Inc., (the “Developer”), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. All amounts are TIF Eligible Project Costs (as defined in the Agreement) that are reimbursable to the Developer pursuant to the Agreement and the TIF Act, (as defined in the Agreement).
2. All amounts have been advanced by the Developer for TIF Eligible Project Costs (as defined in the Agreement) in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous reimbursement under the Agreement from the Reimbursement Funds or request for reimbursement from the TIF Fund (as defined in the Agreement).
4. All taxes and assessments currently due on any property owned by the Developer in the City of Topeka have been paid.
5. No uncured Events of Default under the Agreement currently exist.

The Developer further certifies that all insurance policies required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$_____, which amount is itemized on Attachment F-1 attached hereto and which Attachment F-1 includes _____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate. Attached to Attachment F-1 are copies of the contract, invoice or other billing for the TIF Eligible Project Costs for which the Developer seeks reimbursement, along with copies of checks, evidence of wire transfers or other evidence of

payment by the Developer of such TIF Eligible Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

911 Walnut, Inc.
a Missouri Corporation

By: _____
Name

Title

ATTACHMENT F-1
TO CERTIFICATION OF ELIGIBLE TIF PROJECT COSTS
(911 WALNUT)

CITY OF TOPEKA



Tax Increment Financing Reimbursement Request

Chief Financial Officer
City Hall, 215 SE 7th Street, Suite 358
Topeka, KS 66603-3914
Tel: (785) 368-3970
finance@topeka.org

Submit Requests to Address above.
Reimbursement is contingent upon sales tax revenue received.
Minimum reimbursement is \$1,000.00.
Please include supporting documentation (copies of invoices and checks).

Submission Date:	_____
City Project Number:	_____
Request Number:	_____

Project Cost Breakdown:

	Total	Amount of Draw Request	Budget Remaining
LAND ACQUISITION COSTS			
Total Land Acquisition Costs \$	_____	_____	_____
SITework COSTS			
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
Total Site Costs	_____	\$0	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
Total Costs	_____	\$0	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
Interest Carry on Site Work	_____	_____	_____
Contingency	_____	_____	_____
Other	_____	_____	_____
Total Sitework Costs	_____	\$0	_____

BUILDING COSTS

	<i>Contingency</i>	
Total Building Costs		\$0

SOFT COSTS
Professional Fees

<i>Legal</i>	<i>Total Professional Fees</i>	<i>\$0</i>
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	<i>Legal Subtotal</i>	<i>\$0</i>
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<i>Site Permit/Fees</i>		

	<i>Site Permit/Fees Subtotal</i>	<i>\$0</i>
	Total Soft Costs	\$0

TOTAL REIMBURSEABLE PROJECT COSTS	\$	-
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TOTAL AMOUNT FOR THIS REQUEST	
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EXHIBIT G
TIF Project Costs
(Including CID Eligible Project Costs and TIF Eligible Project Costs)

		TIF	CID
Acquisition and Site Preparation			
Land Acquisition	\$ 250,000	\$ 150,000	\$ 100,000
Site Work Improvements (incl. demo)	\$ 1,396,815	\$ 798,011	\$ 598,804
Vertical Construction			
Lot 1 (NEC)	\$ 3,000,000	\$ -	\$ 598,804
Lot 2 (SEC)	\$ 3,000,000	\$ -	\$ 598,804
Lot 3 (SWC)	\$ 2,500,000	\$ -	\$ 174,252
Soft Costs			
Site Permit/Fees/Legal/TIF	\$ 989,682	\$ 28,588	\$ 50,000
Design/Construction Mgmt.	\$ 989,682	\$ 28,588	\$ 50,000
Other			
Owner Directed Contingency	\$ 296,500	\$ -	\$ -
FF&E (all buildings)	\$ 1,979,363	\$ -	\$ -
Other	\$ 691,849	\$ 28,588	\$ -
Total	\$ 15,093,891	\$ 1,033,775	\$ 2,170,664
		Maximum Reimbursement Amount:*	
		\$3,204,439	
*Plus Reimbursable Interest.			
**Reimbursable amounts may be reallocated between TIF and CID columns and across line items with reimbursable amounts, subject to Section 4(b) and the definitions of "CID Eligible Project Cost" and "TIF Reimbursable Project Cost" in the Agreement.			

EXHIBIT H
TIF Project Plan

Final Version

**TAX INCREMENT FINANCING
REDEVELOPMENT PROJECT PLAN
(SOUTH TOPEKA REDEVELOPMENT DISTRICT)**

The Tax Increment Financing Act, K.S.A. 12-1770, et seq., as amended (the “**TIF Act**”), requires that any Redevelopment Project Plan within the City of Topeka, Kansas (the “**City**”) be created in consultation with the City. As part of that consultation, the Planning Commission is required by the TIF Act to determine whether the development components of the Redevelopment Project Plan (“**Project Plan**”) are consistent with the intent of the City’s Comprehensive Plan.

**SUBMITTED PURSUANT TO
KS.A. 12-1770 *et seq.*, as amended
SUBMITTED BY
911 WALNUT, INC.**

Submitted: April 6, 2023

88895216.6

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Exhibit A – TIF District Legal Description

Exhibit A-1 – TIF District and Project Area Boundary Map

I. INTRODUCTION

Pursuant to the Kansas Tax Increment Financing Act, K.S.A. 12-1770 et seq., as amended (the “**TIF Act**”), Kansas municipalities are authorized to establish redevelopment districts and redevelopment project plans for property within their jurisdiction. Redevelopment districts may be created based upon certain findings by the municipality, including, that property within a proposed district meets the requirements of a “enterprise zone” as defined by the TIF Act.

On October 11, 2022, the Topeka, Kansas (the “**City**”), after conducting a duly noticed public hearing, found that an enterprise zone exists on the property generally located at the intersection of SW Topeka Boulevard and SW 37th Street within the City. Based in part upon said finding, the City adopted Ordinance No. 20378, creating the South Topeka Redevelopment District encompassing the subject property (the “**TIF District**”) and approving a plan for redevelopment of the TIF District established under K.S.A. 12-1771 and amendments thereto (the “**District Plan**” as further described herein).

This redevelopment project plan (the “**Project Plan**”) for a redevelopment project area (“**Project Area**”) within the TIF District, the general boundaries of which are depicted on **Exhibit A-1** attached hereto, is presented to the City for its consideration and approval, with the maximum twenty (20) year term of the Project Plan to commence upon the effective date as specified in the resolution or ordinance adopting this Project Plan.

II. THE PROJECT PLAN

A. Description of the TIF District and Project Area

The property comprising the TIF District consists of approximately 5.05 acres generally located at the southwest quarter of 32nd Terrace and SW Topeka Boulevard within the City. A legal description and boundary map of the TIF District are attached hereto as **Exhibits A** and **A-1**, respectively. The general boundaries of the Project Area are depicted on **Exhibit A-1**.

B. Established TIF District

The Property is within an established TIF District approved by the City on October 11, 2022, pursuant to Ordinance No. 20378. The approved District Plan contained within the Ordinance provides for certain redevelopment projects within the TIF District. This Project Plan proposes the use of tax increment financing revenues generated by the Project Area to pay for or reimburse the costs of the redevelopment project described below (the “**Redevelopment Project**”).

C. Redevelopment Project

Consistent with the District Plan, the Project Plan for the Redevelopment Project is anticipated to include:

- Approximately three (3) commercial buildings totaling approximately 20,000 sf;

- Construction/installation of associated amenities and infrastructure including surface parking, landscaping, lighting, utilities, storm water improvements, sidewalks/walkways, streets/drives and other infrastructure improvements; and
- Land acquisition and design, legal, brokerage, and other fees and soft costs.

These proposed uses are consistent with the District Plan, as approved by the City.

Implementation of the Project Plan is proposed through a combination of public and private financing as described herein. In addition to private equity and financing and other public financing sources, 911 Walnut, Inc., a Missouri corporation, or its affiliates, assigns or successors (the “**Developer**”) anticipates that the required public financing will include Tax Increment Financing (“**TIF**”). The Developer is requesting reimbursement with TIF revenue as provided in the TIF Act (“**TIF Revenue**”) on a pay-as-you-go basis for certain eligible costs associated with the Redevelopment Project.

D. Summary of Feasibility Study

Columbia Capital Management, LLC, financial advisor to the City, prepared a financial analysis of the Redevelopment Project as required under K.S.A. 12-1772(a)(1) (the “**Feasibility Study**”). A summary of the Feasibility Study is provided below:

The Developer submitted its proposal for the Redevelopment Project to the City for consideration of potential TIF incentives. The Project Area is part of the TIF District. The Redevelopment Project would result in the redevelopment of approximately 5.05 acres at the southwest corner of 32nd St. and Topeka Boulevard to permit construction of approximately three (3) commercial buildings, collectively comprising approximately 20,000 sf of newly constructed commercial space (the “**Project**”). The Developer is in good standing as of March 28, 2023, according to the records of the Missouri Secretary of State.

According to the Project Plan, the Project will result in the demolition of existing structures and construction of approximately (3) commercial buildings, which are anticipated to consist of the following:

Restaurants

The Developer intends to prepare two (2) pad sites along the west side of Topeka Blvd. for the construction by third-parties of two approximately 5,000 sf fast food restaurants.

Retail

The Developer intends to construct a retail strip behind the restaurant pads that is expected to be a multi-tenant retail use.

Related Costs

Developer’s related costs include property acquisition, site preparation (including demolition of existing structures), the construction of infrastructure, landscaping, building improvements, signage, and streetscape improvements.

The total development cost reflected in the Plan is as follows, including costs incurred by third-parties:

USE	TOTAL BUDGET	TIF ELIGIBLE	CID ELIGIBLE
Acquisition & Site Preparation			
Land Acquisition	\$ 250,000	\$ 150,000	\$ 100,000
Site Work Improvements	1,396,815	1,396,815	0
Vertical Construction			
Vertical Building Construction	8,500,000	0	1,371,860
Soft Costs			
Site Permit/Fees	989,682	28,588	50,000
Design/Construction Mgt	989,682	28,588	50,000
Other			
Owner Directed Contingency	296,500	0	0
Furniture, Fixtures & Equipment	1,979,363	0	0
Other	691,849	28,588	0
TOTALS	\$ 15,093,891	\$ 1,632,579	\$ 1,571,860

The Developer's financial modeling relies on an assumption of a capital stack comprised of both debt and equity, plus funds from third parties, applied against total development costs:

SOURCES OF FUNDS	Developer	Others	TOTAL
Debt	\$ 3,408,251	n/a	\$ 3,408,251
Equity	\$ 2,272,167	\$ 9,413,473	\$ 11,685,640
TOTAL SOURCES	\$ 5,680,418	\$ 9,413,473	\$ 15,093,891

Developer expects to sell the pad sites early in the development, reducing its net investment from approximately \$5.7 million to approximately \$3.0 million.

Based upon our review of the information provided by the Developer in the Plan, as supplemented with more detailed information provided to City staff and to us, we find the following:

- the total development costs of the Project are \$15,093,891
- this total development cost will be initially paid through a combination of debt (approximately \$3,408,251) and Developer equity (approximately \$2,272,167), with the balance (approximately \$9,413,473) paid by third-parties
- the future value incentives available to the Developer under the Plan are projected at approximately \$4,200,000. The incentives will be generated over time as TIF and CID

receipts are generated and Developer intends to share a portion of the CID benefit with the eventual owners of the two restaurant pad sites

- the Developer's projected net operating income from the Project at stabilization plus its projected incentives grant in such year exceed its expected costs of servicing the debt in that year and each subsequent year

As such, the Plan's benefits and TIF revenue and other available revenues under subsection (a)(1) of K.S.A. 12-1774, and amendments thereto, are expected to exceed or be sufficient to pay for the Redevelopment Project costs. The Redevelopment Project will have no effect on any outstanding special obligation bonds payable from the revenues described in K.S.A. 12-1774(a)(1)(D), and amendments thereto.

III. RELOCATION PLAN

In the event the City acquires any real property within the Project Area in carrying out the provisions of the TIF Act, and that, as a result, any persons, families and businesses move from real property located in the Project Area or move personal property from real property located in the Project Area, the Developer shall make a \$500 payment to such persons, families and businesses. No persons or families residing in the TIF District shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwelling. Developer shall provide for payment of any damages sustained by a retailer, as defined in K.S.A. 79-3702, by reason of liquidation of inventories necessitated by relocation from the redevelopment district. Pursuant to the requirements above, it is not anticipated that any relocation assistance will be required as a result of the Redevelopment Project.

EXHIBIT A
TIF DISTRICT
LEGAL DESCRIPTION

Part of Lot 1, Nellie M. Mays Subdivision, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, written by Michael A. Adams, P.S. 1126 on this 8th day of June, 2022, described as follows:

Beginning at the Southwest corner of said Lot 1, thence North 00 degrees 29 minutes 37 seconds East a distance of 413.46 feet to a point of curvature; thence on a curve to the left, having a radius of 360.00 feet, a chord which bears North 14 degrees 47 minutes 16 seconds West a distance of 189.77 feet, an arc distance of 192.04 feet to the Southwest corner of a property described in City of Topeka Ordinance No. 15830, Book 2445, Page 071, filed at the Office of the Shawnee County Clerk; thence on the South line of said property described in Book 2445, Page 071 for the following three courses: South 89 degrees 58 minutes 34 seconds East a distance of 41.92 feet; thence North 42 degrees 30 minutes 24 seconds East a distance of 36.17 feet; thence South 89 degrees 58 minutes 34 seconds East a distance of 340.00 feet to the West line of Lot 3, Arlan's Subdivision in the City of Topeka; thence South 00 degrees 34 minutes 47 seconds West a distance of 158.76 feet to the Southwest corner of said Lot 3; thence North 90 degrees 00 minutes 00 seconds East a distance of 127.32 feet to the Southeast corner of said Lot 3; thence South 00 degrees 32 minutes 51 seconds West a distance of 30.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 29.71 feet; thence South 00 degrees 28 minutes 11 seconds West a distance of 209.22 feet to the North line of Lot 1, Block 'A', Perkins Subdivision in the City of Topeka; thence South 89 degrees 58 minutes 44 seconds West a distance of 126.50 feet to the Northwest corner of said Lot 1; thence South 00 degrees 27 minutes 50 seconds West a distance of 225.17 feet to the Southwest corner of said Lot 1; thence South 89 degrees 57 minutes 42 seconds West a distance of 386.59 feet to the point of beginning. This tract contains 6.16 acres of land more or less. Said tract to be recorded as Lot 1, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Part of Lot 1, Nellie M. Mays Subdivision, a Replat, located in the Northeast Quarter of Section 13, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, written by Travis L. Haizlip, P.S. 1724 on this 31st day of October, 2022, described as follows:

Beginning on the Northeast corner of Lot 1, Nellie M. Mays Subdivision, a Replat; thence South 00 degrees 28 minutes 11 seconds West on the East line of said Lot 1 a distance of 209.06 feet to the Northeast corner of Lot 1, Block 'A', Perkins Subdivision, thence South 89 degrees 58 minutes 44 seconds West on the North line of Lot 1, Perkins Subdivision a distance of 438.52 feet; thence North 00 degrees 28 minutes 11 seconds East a distance of 209.22 feet to the North line of Lot 1, Nellie M. Mays Subdivision, a Replat; thence North 90 degrees 00 minutes 00 seconds East on said North line a distance of 438.52 feet to the point of beginning. This tract contains 2.11 acres of land more or less. Said tract to be platted as Lot 2, Block A, Nellie M. Mays Subdivision No. 2, City of Topeka, Shawnee County, Kansas.

Lot 1, Block A, Perkins Subdivision, in the City of Topeka, Shawnee County, Kansas.

EXHIBIT A-1

TIF DISTRICT AND PROJECT AREA BOUNDARY MAP

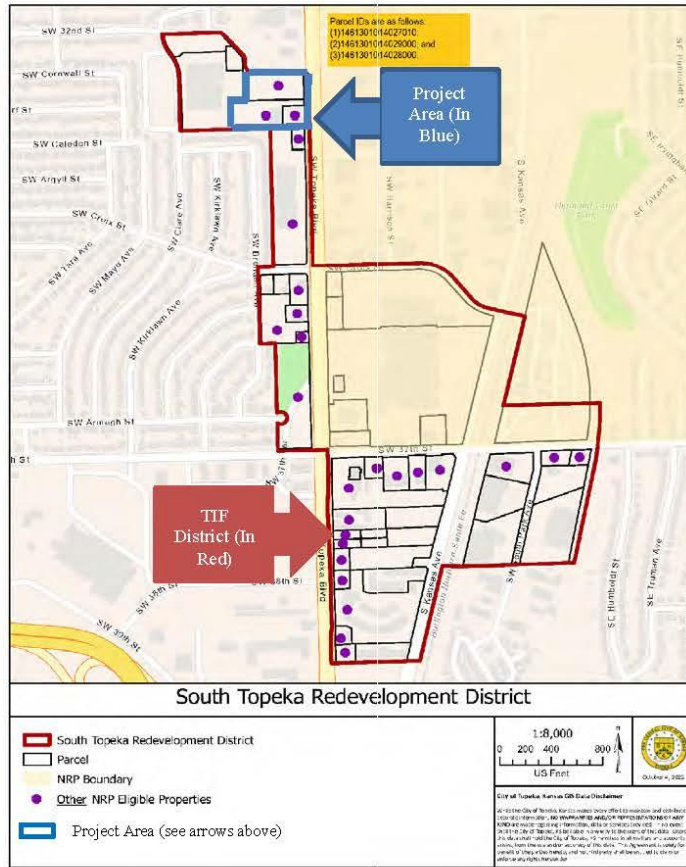


EXHIBIT A-1

PROJECT AREA BOUNDARY: GENERAL DEPICTION

Zoomed in aerial image of Project Area (boundaries generally depicted in blue) provided below.



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EXHIBIT I
Prohibited Tenants/End Users

Adult entertainment
Adult bookstore
Arcade*
Body piercing, other than ears
Car wash that is exclusively non-automated self-service
Cellular or other telecommunications towers or facilities which are not stealth or fully integrated
Day care*
Mobile home park
Mobile home sales
Pawn shop
Pay-day loan services
Permanent rooftop signage, except for any signage approved by the City**
Satellite dishes that are not fully integrated
Tattoo parlor

* This land use may be allowed as an accessory use if approved pursuant to City approval and such use is a subordinate use that is customarily and incidentally associated with the primary use, is located entirely within the structure of a primary use, and is not visible from and cannot be directly accessed from the exterior of the structure that contains the primary use.

** Temporary roof top signage may be allowed pursuant to the Topeka Municipal Code.