
FOURTH AMENDMENT OF DEVELOPMENT AGREEMENT

DATED _____, 2017

BETWEEN

CITY OF GODDARD, KANSAS

AND

GODDARD DESTINATION DEVELOPMENT, INC.

RELATING TO THE

GODDARD STAR BOND DISTRICT

FOURTH AMENDMENT OF DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT OF DEVELOPMENT AGREEMENT (this "Fourth Amendment"), is made and entered into as of _____, 2017 by and between the CITY OF GODDARD, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (the "City"); and GODDARD DESTINATION DEVELOPMENT, INC., a Kansas corporation (the "Developer"), with the Developer and the City collectively referred to as the "Parties" and each a "Party").

RECITALS

A. The Parties have entered into a Development Agreement dated April 21, 2014, a First Amendment of Development Agreement dated December 15, 2014, a Second Amendment of Development Agreement dated March 16, 2015, and a Third Amendment of Development Agreement dated March 21, 2016 (collectively, the "**Development Agreement**") in connection with a STAR bond district created by the City pursuant to K.S.A. § 12-17,160 et seq., as amended, known as the Goddard STAR Bond District (the "**District**"), which comprises over 280 acres of property located within the City.

B. The Parties now desire to enter into this Fourth Amendment to amend the Development Agreement.

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

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions of Words and Terms. For all purposes of this Fourth Amendment, except as otherwise provided or unless the context otherwise requires, the words and terms used in this Fourth Amendment shall have the meanings set forth in Section 1.01 of the Development Agreement.

AMENDMENT OF DEVELOPMENT AGREEMENT

Section 201. Amendment to Section 1.01 of the Development Agreement.

(a) The definition of Agreement is hereby deleted and replaced with the following:

"Agreement" means the Development Agreement (as defined below), as amended by this Fourth Amendment.

(b) The definition of Event of Default set forth in Section 1.01 is hereby deleted and replaced with the following:

"Event of Default" means any event or occurrence as defined in Article VIII (which is misidentified as Article XIII in the Development Agreement).

(c) The definition of Hotel Project set forth in Section 1.01 is hereby deleted and replaced with the following:

“**Hotel Project**” means the hotel to be constructed as part of Phase I, consisting of the following: a 100 room luxury hotel with deluxe suites and rooms with family bunk beds with a hotel flag approved by the City, an exercise area, a business computer room, and meeting rooms.

Section 202. Amendment to Section 3.01 of the Development Agreement. Section 3.01 is hereby deleted and replaced with the following:

The work to be undertaken in the first phase of the Project Plan shall include the construction of (i) an indoor aquatic center of not less than 43,000 square feet consisting of an 8 lane 25 meter competition aquatics pool complete with springboard and platform diving with spectator seating for 600 plus poolside seating for contestants, dressing and locker rooms, and an indoor water park featuring indoor slides and other aquatic activities, (ii) four (4) competition fields for softball and baseball, with synthetic turf playing surfaces on the infield of all fields, synthetic turf playing surfaces on the outfield of one (1) field and grass playing surfaces on the outfield of three (3) fields, stadium lighting, covered tiered seating, and complete concessions and restroom areas, (iii) the Hotel Project; (iv) an Old Chicago brand upscale pizza grille and taproom for seating up to 250 with a heated outdoor dining area (the “**Restaurant**”); and (v) all public and private infrastructure (the “**Infrastructure Improvements**”) required in the Developer's discretion to facilitate the Project (collectively, the “**Developer Project**,” and from time to time referred to as “**Phase I**”). A concept plan depicting Phase I is attached as Exhibit A.

Section 203. Amendment to Section 3.03 of the Development Agreement. The first sentence of Section 3.03 is hereby deleted and replaced with the following:

For a period of five (5) years beginning on the date of this Fourth Amendment, the Developer shall be deemed the “Master Developer” for the Project.

Section 204. Amendment to Section 3.04 of the Development Agreement. The first and second paragraphs of Section 3.04 are hereby deleted and replaced with the following:

The Parties hereby agree that the construction of the Developer Project, subject to circumstances set forth in **Section 8.07(1)**, shall be undertaken in accordance with the following schedule:

1. The Developer acknowledges that the City has completed the Infrastructure Improvements to be completed by the City.
2. Construction of Phase I shall commence no later than April 1, 2018 and shall be completed no later than January 1, 2020.
3. Construction of all other components of the Project that are not part of Phase I may be undertaken at the Developer’s discretion.

The parties acknowledge that substantial delays have occurred in progress on the Developer Project and agree that time is of the essence of the Development Agreement including the dates set forth above. Provided Developer is continuing with reasonable diligence to complete construction of Phase I, City will reasonably consider any and all delays that may cause Developer to deviate from the dates set forth above when determining whether to declare an Event of Default. The parties also acknowledge that Section 8.07, Enforced Delay; Extension of Times of Performance, shall apply to the dates set forth above.

Section 205. Amendment to Section 5.01 of the Development Agreement.

Section 5.01 of the Development Agreement is hereby amended to read as follows:

Section 5.01 Sources of Funding. The Parties contemplate that the costs of the Developer Project (the “Project Costs”) may be financed by the following sources of funds, subject to the terms of this Agreement: (i) costs incurred and financed by the Developer with private debt and equity, or other public incentives, if any, (ii) STAR Bonds issued by the City in accordance with the Project Plan and the STAR Bond Act that provide net bond proceeds of up to \$25,400,000, and (iii) City funds (the “City Contribution”) for the cost of an interior access road to serve the Project, which Developer acknowledges has been completed. In addition, the City shall provide funding up to \$3,000,000 to be used exclusively as follows and in the following order of priority:

1. For the cost of installing synthetic turf outfield playing surfaces on the one field required to have a turf outfield described in Section 202 above;
2. Subject to approval by the Kansas Department of Transportation, the cost of either of the following on US-54 Highway to service the Project: (a) a restricted crossing u-turn intersection, or (b) a signalized intersection. City and Developer agree that a signalized intersection is the preferred option, and shall cooperate and in good faith pursue approval of a signalized intersection as the preferred option; and
3. For the cost of installing synthetic turf outfield playing surfaces instead of grass on the outfield of any one or more of the fields described as having grass outfields in Section 202 above.

The Parties acknowledge that installing synthetic turf on the three outfields with grass playing surfaces would benefit the Project. The Parties shall use best efforts to install synthetic turf on the three outfields with grass playing surfaces if any when funds may be available to either Party to pay installation costs. In addition, City shall have the right at any time to require that Developer install synthetic turf on the three outfields with grass playing surfaces provided City pays all costs of installation.

Section 206. Amendment to Section 7.03.A. of the Development Agreement. The following sentence is added to Section 7.03.A.:

The City hereby approves the Hotel flag of IHG Holiday Inn.

Section 207. Amendment to Exhibit E of the Development Agreement. Exhibit E is hereby deleted and replaced with Exhibit B attached hereto.

Section 208. Waiver of Current Defaults. The Parties hereby waive any current default or Event of Default that has occurred and is continuing; provided, however, for any default or Event of Default so waived, such waiver shall not apply to any same or similar default or Event of Default that occurs after the date of this Amendment.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 301. Applicability of the Development Agreement. Except as otherwise provided in this Fourth Amendment, the provisions of the Development Agreement are hereby ratified, approved and confirmed and incorporated herein.

Section 302. Assignment; Permitted Transfer. Pursuant to Section 9.01 of the Development Agreement, the City hereby approves the assignment and transfer of all of Developer's rights and duties under the Development Agreement, as amended by this Amendment, to S & O Investments, Inc., a Kansas corporation, Attention: Amro Samy, 1911 East Kansas Ave., Garden City, KS 67846.

Section 303. Mandatory Redemption from Project Fund. The City issued \$30,000,000 Sales Tax Special Obligation Revenue Bonds (Olympic Park STAR Bond Project), Series 2014 pursuant to that certain Bond Trust Indenture dated September 1, 2014 (the "**Indenture**") between the City and Security Bank of Kansas City (the "**Trustee**"). Provided the Developer delivers to the City consent required by Section 1002 of the Indenture, the City shall cause the Trustee to enter into a supplemental indenture with City that deletes Section 302(c) of the Indenture.

Section 304. Severability. If any provision in this Fourth Amendment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 305. Execution in Counterparts. This Fourth Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 306. Governing Law. This Fourth Amendment shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 307. Response to State Questions. The Interim Secretary of Commerce of the State of Kansas delivered a letter to City dated December 4, 2017 stating that the State has further questions about visitation to the Natatorium. The Parties agree to work diligently and in good faith to address such questions.

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

CITY OF GODDARD, KANSAS

Marcey Gregory, Mayor

ATTEST:

Teri Laymon, City Clerk

APPROVED AS TO FORM:

Ryan Peck, City Attorney

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Appeared before me today, this _____ day of _____, 2017, Marcey Gregory, personally known to me and after first being sworn did state that she is the Mayor of the City of Goddard, State of Kansas, and that the seal affixed to the foregoing instrument is the official Seal of the City of Goddard, and that said instrument was signed and scaled on behalf of the City, and that the matters set forth herein are true and correct to the best of her and the City's knowledge, information and belief, and acknowledge that she executed the same on behalf of the City as its free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

DEVELOPER:

Goddard Destination Development, Inc.,
a Kansas corporation

Michael J. Boyd, President

STATE OF KANSAS)
) ss.
COUNTY OF _____)

Appeared before me today, this _____ day of _____, 2017, Michael J. Boyd, to me personally known, who being by me duly sworn did say that he is the President of Goddard Destination Development, Inc., and that said instrument was signed and delivered on behalf of said company and acknowledged to me that he executed the same as the free act and deed of said company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

EXHIBIT A

Depiction of Phase I

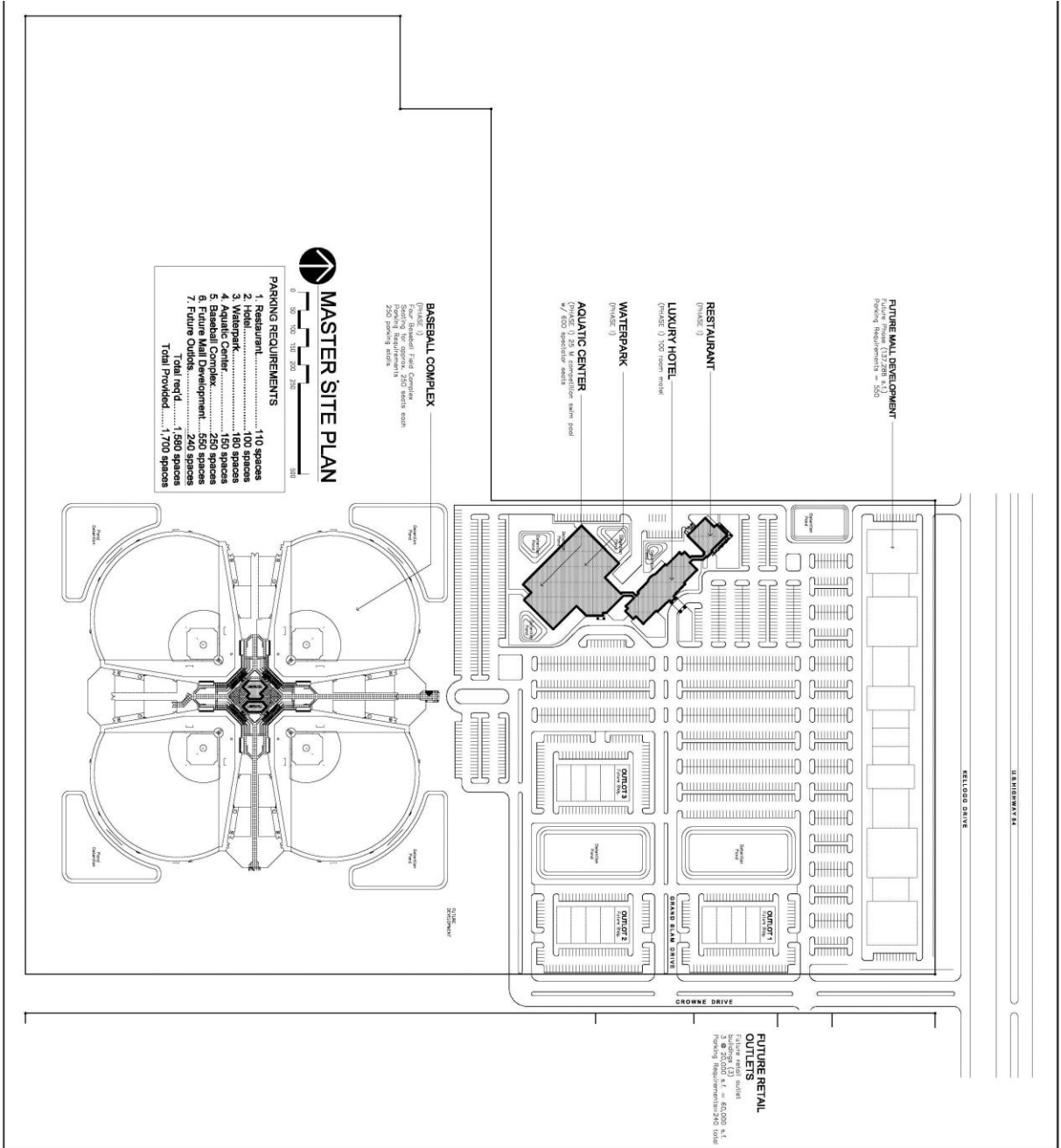


EXHIBIT B

Project Budget

Goddard STAR Bond Project - Cost Summary - West Parcel - Phase I

<u>Cost Category</u>	<u>Unit/SF</u>	<u>Cost Per Unit/SF</u>	<u>Phase I STAR Bond Eligible</u>	<u>Phase I STAR Bond Uses</u>
<u>Land Acquisition</u>				
West Parcel	4,573,800		\$ -	\$ -
<u>Infrastructure</u>				
West Parcel	3,223,440	\$3.29	\$ 10,619,000	\$ 10,619,000
<u>West Parcel - Hard Construction Costs</u>				
Hotel	100	\$117,762	\$ 11,776,184	\$ -
Aquatic Center	30,250	\$375	\$ 11,343,750	\$ 11,343,750
Water Park	16,000	\$583	\$ 9,328,000	\$ -
Baseball & Softball Fields	4	\$979,290	\$ 3,917,160	\$ 3,917,160
Restaurant	6,900	\$620	\$ 4,278,000	\$ -
Subtotal:			\$ 40,643,094	\$ 15,260,910
<u>Architecture & Engineering</u>				
West Parcel	% of Hard Costs + Infrastructure:	6%	\$ 3,075,726	\$ 1,552,795
<u>Legal & Accounting</u>				
West Parcel - Legal & Accounting	% of Hard Costs + Infrastructure:	3%	\$ 1,537,863	\$ 776,397
<u>Miscellaneous Soft Costs</u>				
Admin Overhead - West Parcel	% of Hard Costs + Infrastructure:	1%	\$ 512,621	\$ 258,799
Development Fees - West Parcel	% of Hard Costs + Infrastructure:	2%	\$ 1,025,242	\$ 517,598
Subtotal:			\$ 1,537,863	\$ 776,397
			<u>Phase I Eligible</u>	<u>Phase I Uses</u>
<u>Hard Costs</u>				
Land Acquisition			\$ -	\$ -
Infrastructure			\$ 10,619,000	\$ 10,619,000
West Parcel - Hard Construction			\$ 40,643,094	\$ 15,260,910
Architecture & Engineering			\$ 3,075,726	\$ 1,552,795
Subtotal			\$ 54,337,820	\$ 27,432,705
Contingency		6%	\$ 3,260,269	\$ 1,645,962
Hard Costs Total			\$ 57,598,089	\$ 29,078,667

Soft Costs

Legal & Accounting		\$	1,537,863	\$	776,397
Admin Overhead - West Parcel		\$	512,621	\$	258,799
Development Fees - West Parcel		\$	1,025,242	\$	517,598
	Subtotal	\$	3,075,726	\$	1,552,795
	Soft Cost Contingency	3%	\$ 92,272	\$	46,584
	Soft Costs Total	\$	3,167,997	\$	1,599,378
	TOTAL HARD COSTS	\$	57,598,089	\$	29,078,667
	TOTAL SOFT COSTS	\$	3,167,997	\$	1,599,378
	TOTAL PROJECT COSTS	\$	60,766,086	\$	30,678,045