

## DOWNTOWN DEVELOPMENT FUND AGREEMENT

THIS DOWNTOWN DEVELOPMENT FUND AGREEMENT ("Agreement") made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF GARDEN CITY, KANSAS ("City"), a municipal corporation, and \_\_\_\_\_ ("Recipient").

WHEREAS, City will conditionally award funds to Recipient in conjunction with Recipient's successful completion of the APPLICATION FOR DOWNTOWN DEVELOPMENT FUND ("Application") (a copy of which is attached hereto and incorporated herein), which was approved by the Governing Body of the City under date of \_\_\_\_\_ [Insert Date]; and

WHEREAS, it is the desire of City and Recipient to memorialize the expectations and procedures concerning Recipient's conditional award of funds from the City.

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties agree as follows:

1. PREMISES. As delineated in its Application, Recipient has been conditionally granted an award of funds in the amount of \$\_\_\_\_\_ [Insert Dollar Amount] for repairs to **the** property located at the commonly known and numbered address of \_\_\_\_\_ [Insert Address], legally described as follows:

[INSERT LEGAL DESCRIPTION HERE]

The above described property shall hereinafter be referred to as the "Premises".

2. CONDITIONAL AWARD OF FUNDS. In conjunction with **their** successful Application, Recipient agrees and acknowledges that prior to City making any award of funds, Recipient shall:

- a. Initiate the repairs, improvements and/or additions delineated in **their** Application within **180 days of the date of the of the City's approval of the Application** ("Initiation Period"), said Initiation Period concluding on \_\_\_\_\_ [Insert Date 180 Days from Approval];
- b. Allow City staff to perform periodic inspections to the Premises during the period of time within which the repairs are being undertaken in order to monitor progress (said periodic inspections are to monitor progress related to Recipient's compliance with the Application, and are in no way intended to replace or supersede any inspection requirements of Recipient under existing City building and zoning codes);
- c. Submit invoices to City staff in a manner and form sufficient for their review, substantiating the completion of the repairs and/or improvements as delineated in the Application, said improvements to be no less than **90% of the total costs projected therein (i.e. cost estimates)** (included in these invoices should be any professional fees referenced in the Application);
- d. Provide proof that Recipient is in compliance with property tax assessments regarding the Premises; and

- e. Allow City staff the opportunity to complete a final inspection of the Premises, wherein a determination shall be made as to whether or not the repairs, improvements and/or additions have been completed in conformance with:
  - i. The proposed improvements to the Premises as enumerated in the Application;
  - ii. The conditions described in this Agreement; and
  - iii. The Code of Ordinances for the City of Garden City, Kansas, as well as all other relevant and enforceable building and zoning codes within the City.

3. TIMEFRAME FOR AWARD OF FUNDS. Upon Recipient satisfying the obligations and expectations enumerated above at Paragraph 2, City shall award the funds to Recipient in no less than thirty (30) days from the date of City's completion of the final inspection and approval of the Recipient's repairs, improvements and/or additions. City shall make the funds available to Recipient via a mutually agreeable method of payment consisting of either check or wire transfer.

4. TAX IMPLICATIONS OF AWARD OF FUNDS. Recipient acknowledges that any award of funds from the City shall be considered a local government grant. As such, the federal and state tax impact and consequences of the award of funds shall be borne solely by the Recipient. In executing this Agreement, Recipient acknowledges that they are on notice to the existence of potential tax consequences from their award of funds.

5. DEFAULT. This Agreement is made upon the express expectation that Recipient shall comply with all conditions enumerated in Paragraph 2 above. Should Recipient fail to comply with the conditions enumerated in paragraph 2 or any other provision herein for a period of ten (10) days after Recipient's receipt of written notice from City, wherein Recipient's failure(s) to comply with this Agreement are delineated, City may lawfully declare the termination of this Agreement. Upon City declaring the termination of this Agreement, Recipient shall, among other things, no longer be entitled to the award of funds delineated in the Application and this Agreement.

6. NOTICES. Except as otherwise specifically set forth in this Agreement, any notice required by the terms hereof shall be given in writing at the address set forth below by any of the following means: personal service, electronic communication, whether by facsimile or email, national recognized courier service, or registered or certified United States mail, postage prepaid, return receipt requested, as follows:

If to City: Matthew C. Allen, City Manager  
301 North 8<sup>th</sup> Street  
P.O. Box 899  
Garden City Kansas 67846  
Fax: 620-276-1169  
Email: Matt.Allen@gardencityks.us

If to Recipient: [Insert Recipient's Name (if an entity, enter name of entity)]  
[Followed by c/o and contact person's name and information]  
[Insert Address]  
[Insert Fax No.; if applicable]  
[Insert Email Address]

7. NO AGENCY/PARTNERSHIP. It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture or any other business relationship between City and Recipient.

8. FORCE MAJEURE. Any unforeseeable and unavoidable occurrence beyond the reasonable control of a party that prevents a party from fully performing its obligations hereunder, including, without limitation, acts of God, criminal acts, acts of war, explosions, epidemics, civil disturbances, labor problems, loss or malfunction of utilities, computer or communications services, or unforeseeable and unavoidable governmental actions by a governmental authority shall relieve the parties from compliance with this Agreement. Should such an event occur, the parties may, by mutual agreement, consent to an extension of the Initiation Period.

9. NONAPPROPRIATION OF FUNDS. In the event sufficient funds shall not be appropriated by the City for the award of funds required under the terms and conditions of this Agreement, the City may terminate this Agreement pursuant to the notice requirement set forth above at Paragraph 6. This Agreement is subject to the terms and provisions of the Cash Basis Law, K.S.A. 10-1101 *et seq.*, and the Kansas Budget Law, K.S.A. 79-2925 *et seq.*

10. GENERAL COVENANTS.

- a. This Agreement incorporates all the obligations, agreements and understandings of City and \_\_\_\_\_ [Insert Recipient] and there are no oral agreements or understandings between City and \_\_\_\_\_ [Insert Recipient] concerning the purpose covered by this Agreement.
- b. This Agreement may be amended, changed or modified, only upon the written consent of both City and \_\_\_\_\_ [Insert Recipient].
- c. This Agreement shall be binding upon and inure to the benefit of parties hereto, and their permitted successors, assigns and personal representatives.
- d. This Agreement shall be construed in accordance with the laws of the state of Kansas.
- e. The headings of the paragraphs of this Agreement are for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of any provisions of this Agreement.
- f. In the event either party to this Agreement seeks legal enforcement or interpretation of this Agreement, and as often as, the prevailing party shall be entitled to reimbursement for its incurred costs, including, but not limited to, attorneys' fees, filing fees and other related court costs.
- g. If any part of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining portions shall continue to remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed by City and \_\_\_\_\_ [Insert Recipient] effective the day and year first above written.

CITY OF GARDEN CITY, KANSAS

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Matthew C. Allen, City Manager

RECIPIENT  
[INSERT ENTITY NAME, IF APPLICABLE]

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
[Insert Individual's Name or Authorized Representative of Entity]