

**AGENDA**  
**CITY COMMISSION SPECIAL MEETING**  
**Thursday, September 18, 2014**  
**8:30 A.M.**

**I. SPECIAL MEETING CALLED TO ORDER AND CITY CLERK ANNOUNCING QUORUM PRESENT.**

1. Ordinance No. \_\_\_\_\_ - 2014, an ordinance of the City of Garden City, Kansas, establishing a Rural Housing Incentive District within the City and adopting a plan for the Development of Housing and Public Facilities in such district, and making certain findings in conjunction therewith (Clarion Park Estates).

**II. ADJOURN.**

# Ordinances & Resolutions



# Memo

To: City Commission  
From: Kaleb Kentner  
CC: File  
Date: 9/15/2014  
Re: An Ordinance Adopting a Development Plan, and Establishing the Clarion Park Estates RHID.

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**ISSUE:** An Ordinance Adopting a Development Plan, and Establishing the Clarion Park Estates RHID.

**BACKGROUND:** The Clarion Park Estates RHID project has come before the City Commission twice before as State Statute requires. This Ordinance is the final step in the RHID process. The purpose of the Ordinance is to adopt the attached Development Plan and establish the RHID.

Clarion Park Estates will be located at the northwest corner of Spruce Street and Jennie Barker Road. The development will consist of thirty six (36) single family homes and sixteen (16) duplexes, totaling sixty eight (68) units. Each housing unit will have a garage and washer and dryer hookups, along with cable. Staff has determined this project would comply with the most recent housing study.

If the Ordinance is adopted, the County, USD 457, and Garden City Community College, as taxing entities, will then have thirty (30) days in which to evaluate the proposed RHID to determine if it has an adverse effect on their jurisdiction and to adopt a resolution stating as such. If no such resolutions are passed, then the Ordinance shall be in effect. If within that timeframe any of the taxing entities passes such a resolution, then the City will need to take action to repeal the Ordinance as required by statute.

**ALTERNATIVES:**

1. The Commission may elect to adopt the attached ordinance.
2. The Commission may elect to not adopt the attached ordinance.

**RECOMMENDATION:** Staff recommends approval of the ordinance.

**FISCAL NOTE:** The developer will be using private financing to fund the eligible costs of the RHID. The City will reimburse property tax increments to the developer over the life of the project, which is up to fifteen (15) years.

COMMUNITY  
DEVELOPMENT  
DEPARTMENT  
SERVING  
GARDEN CITY  
HOLCOMB  
AND  
FINNEY COUNTY  
620-276-1170

**INSPECTIONS**  
620-276-1120  
[inspection@garden-city.org](mailto:inspection@garden-city.org)

**CODE COMPLIANCE**  
620-276-1120  
[code@garden-city.org](mailto:code@garden-city.org)

**PLANNING AND  
ZONING**  
620-276-1170  
[planning@garden-city.org](mailto:planning@garden-city.org)

CITY ADMINISTRATIVE  
CENTER  
301 N. 8<sup>TH</sup>  
P.O. Box 998  
GARDEN CITY, KS  
67846-0998  
620.276.1170  
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0 87.5 175 350 Feet



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GARDEN CITY, KANSAS,  
ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE  
CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING  
AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN  
FINDINGS IN CONJUNCTION THEREWITH (CLARION PARK ESTATES)**

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**WHEREAS**, K.S.A. 12-5242 et seq. (the "Act") authorizes any city incorporated in accordance with the laws of the State of Kansas (the "State") with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

**WHEREAS**, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

**WHEREAS**, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

**WHEREAS**, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the "Secretary") requesting that the Secretary agree with the finding contained in such resolution; and

**WHEREAS**, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development or redevelopment of housing and public facilities in the proposed district; and

**WHEREAS**, the City of Garden City, Kansas (the "City") has an estimated population of 30,678, is located in Finney County, Kansas which has a population of 40,964 and therefore constitutes a city as said term is defined in this act; and

**WHEREAS**, in August of 2012 the Governing Body of the updated the Community Housing Assessment Team Report dated December 15, 2008 (CHAT), a copy of which is on file in the office of the City Clerk; and

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2541-2013 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

**WHEREAS**, the Secretary, pursuant to a letter dated October 1, 2013, authorized the City to proceed with the establishment of Rural Housing Incentive Districts pursuant to the Act; and

**WHEREAS**, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed Rural Housing Incentive District (the "District") in accordance with the provisions of the Act (the "Plan"); and

**WHEREAS**, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5244;
2. The existing assessed valuation of the real estate in the proposed District, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;

5. A listing of the names, addresses, and specific interest in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 18, 2014, and provided for notice of such public hearing as provided in the Act; and

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2596-2014 which made a finding that the City is considering the establishment of the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provides a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 18, 2014, and provided for notice of such public hearing as provided in the Act: and

**WHEREAS**, a public hearing was held on September 18, 2014, after due published and delivered notice in accordance with the provisions of the Act; and

**WHEREAS**, upon and considering the information and public comments received at the public hearing, the Governing Body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Garden City, Kansas, as follows:

**Section 1. Findings.** The Governing Body hereby finds that due notice of the public hearing conducted September 18, 2014, was made in accordance with the provisions of the Act.

**Section 2. Creation of Rural Housing Incentive District.** A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property in the Development, in the City of Garden City, Finney County, Kansas:

A tract of land in the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., in Finney County, Kansas, more particularly described as follows: commencing at the East Quarter corner of Section 16, Township 24 South, Range 32 West, thence at an assumed bearing of North 0o00'00" East along the East section line of Section 16 for a distance of 30.00 feet to the point of beginning; thence at a bearing of North 89o50'32" West for a distance of 300.00 feet; thence along the East line of USD 457 property at a bearing of North 0o01'28" East for a distance of 630 feet; thence at a bearing of South 89o50'32" East for a distance of 299.72 feet; thence South along the East line of Section 16 at a bearing of South 0o00'00" West for a distance of 630.00 feet to the point of beginning.

EXCEPT Tracts deeded to the City of Garden City, Kansas by Deed filed in Book 273, page 166, described as follows:

The Easterly 35 feet of the Northerly 333.88 feet of the Southerly 659.65 feet of the Northeast Quarter (NE/4) of Section 16, Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., Finney County Kansas; and

The Easterly 40 feet of the Northerly 261.00 feet of the Southerly 325.77 feet of the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., and

The Easterly 75 feet of the Southerly 64.77 feet of the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., in Finney County, Kansas.

AND

A tract of land located in Section Sixteen(16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., in Finney County, Kansas, more particularly described as follows:

Beginning at the East Quarter Corner of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6th P.M., Finney County, Kansas, thence North along the East Section Line of said Section Sixteen (16), a distance of 660 feet; thence West to the West right of way line of Jennie Barker Road 30.00 feet, said point also being the true point of beginning; thence North 660 feet; thence West 660 feet; thence South 660 feet; thence East 660 feet to the true point of beginning. Except all water rights and rights to appropriate water.

And EXCEPT the Easterly Five (5) Feet deeded to the City of Garden City, Kansas by Deed filed in Book 273, Page 167.

The boundaries of the District do not contain any property not referenced in Resolution No. 2541-2013, which provided notice of public hearing on the creation of the District and adoption of the Plan.

**Section 3. Approval of Development Plan.** The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved.

**Section 4. Adverse Effect on Other Government Units.** If, within thirty (30) days following the conclusion of the public hearing on September 18, 2014, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

1. The Board of Education of U.S.D. No. 457 determines by resolution that the District will have an adverse effect on such school district; or
2. The Board of County Commissioners of Finney County, Kansas, determines by resolution that the District will have an adverse effect on such county.
3. The Board of Trustees Garden City Community College determines by resolution that the District will have an adverse effect on such community college.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of Finney County, Unified School District No. 457, or Garden City Community College.

**Section 5. Reimbursement.** The Act authorizes the City to reimburse the developer for all or a portion of the costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of the Act.

**Section 6. Further Action.** The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

**Section 7. Effective Date.** This Ordinance shall be effective upon its passage by the Governing Body of the City of Garden City, Kansas and publication one time in the official City newspaper.

**PASSED** by the Governing Body of the City of Garden City, Kansas and signed by the Mayor on September 18, 2014.

\_\_\_\_\_  
Roy Cessna, Mayor

ATTEST:

\_\_\_\_\_  
Celyn N. Hurtado,  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
RANDALL D. GRISELL, City Counselor

**DEVELOPMENT PLAN  
FOR CLARION PARK ESTATES RURAL HOUSING INCENTIVE DISTRICT  
OF THE CITY OF GARDEN CITY, KANSAS  
September, 2014**

## **INTRODUCTION**

On August 24, 2013 the Governing Body of the City of Garden City, Kansas (the City) adopted Resolution No. 2541-2013 that found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within the City pursuant to the Act. (K.S.A. 12-5219 et seq.)

Following the adoption of Resolution No. 2541-2013, a certified copy was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in the City, as required by K.S.A. 12-5244(c).

On October 1, 2013, the Secretary of Commerce provided written confirmation, approving the establishment of the Clarion Park Estates Rural Housing Incentive District (the District) (Resolution 2541-2013, exhibits A-1 and A-2).

## **DEVELOPMENT PLAN ADOPTION**

K.S.A. 12-5245 states that once the City receives approval from the Secretary of Commerce for the development of a Kansas Rural Housing Incentive District, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

## **DEVELOPMENT PLAN**

As a result of the shortage of quality housing within Garden City, the City proposes this Development Plan to assist in the development of quality housing within the City.

1. The legal description of Clarion Park Estates Rural Housing Incentive District is:

A tract of land in the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas, more particularly described as follows: commencing at the East Quarter corner of Section 16, Township 24 South, Range 32 West, thence at an assumed bearing of North 0°00'00" East along the East section line of Section 16 for a

distance of 30.00 feet to the point of beginning; thence at a bearing of North 89°50'32" West for a distance of 300.00 feet; thence along the East line of USD 457 property at a bearing of North 0°01'28" East for a distance of 630 feet; thence at a bearing of South 89°50'32" East for a distance of 299.72 feet; thence South along the East line of Section 16 at a bearing of South 0°00'00" West for a distance of 630.00 feet to the point of beginning.

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The Easterly 75 feet of the Southerly 64.77 feet of the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas.

AND

A tract of land located in Section Sixteen(16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas, more particularly described as follows:

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And EXCEPT the Easterly Five (5) Feet deeded to the City of Garden City, Kansas by Deed filed in Book 273, Page 167.

A map of the District is attached as **Exhibit A** to this document.

2. The assessed valuation of all real estate within the District for 2013 is \$800.00.
3. The name and address of the owner(s) of record for the real estate within the District is:

Stone Development, Inc.  
2125 Buffalo Heights

Garden City, KS 67846

4. The housing and public facilities project that are proposed to be constructed include the following:

**Housing Facilities**

There will be thirty six (36) single family homes and sixteen (16) duplexes. The single family homes and duplexes will have garages. The single family homes and duplexes will have cable and washer and dryer hookups.

**Public Facilities**

Public improvements will include construction of infrastructure improvements located within the boundaries of the District, including street, water, sanitary sewer, and electric improvements. Infrastructure improvements will be constructed concurrently with the project.

5. The names, addresses, and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities are:

Owner(s) of Real Property:	Stone Development Inc.
Developer: (Site Work and Infrastructure)	Samy's Development, LLC

1. The Governing Body of the City entered into a Development Agreement with Samy's Development, LLC, in September of 2014. The Development Agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the developer and financial and administrative support from the City. The complete Development Agreement is attached hereto as **Exhibit C**.
2. The City conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached hereto as **Exhibit B**. the analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support reimbursement to the Developer for all or a portion of the costs of financing the public infrastructure. The estimates indicate that the revenue realized from the project would be adequate to pay all or a significant portion of the eligible costs.



**DEVELOPMENT PLAN – EXHIBIT B  
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS**

<b>Cost of Infrastructure Improvements</b>	
\$	2,687,091.70

	<b>Current Value</b>	<b>Property Class</b>	<b>Mill Levy</b>	<b>Annual Tax</b>
Estimate	\$ 580.00	30.0%	0.14872	\$ 25.88
Estimate	\$ 220.00	25.0%	0.14872	\$ 8.18
			<b>Total</b>	<b>\$ 34.06</b>

<b>Lot Details</b>	<b>Land + Building</b>	<b>Property Class</b>	<b>Mill Levy</b>	<b>Post Improvement Tax</b>	<b>Increment</b>	<b>Number of Lot</b>	<b>Total Value</b>
Single Family Homes	\$ 179,900.00	11.5%	0.14872	\$ 3,076.71	\$ 3,042.66	18	\$ 54,767.79
Single Family Homes	\$ 189,900.00	11.5%	0.14872	\$ 3,247.73	\$ 3,213.68	16	\$ 51,418.85
Single Family Homes	\$ 199,900.00	11.5%	0.14872	\$ 3,418.76	\$ 3,384.70	2	\$ 6,769.40
Duplexes	\$ 210,000.00	11.5%	0.14872	\$ 3,591.59	\$ 3,557.53	16	\$ 56,920.51

<b>15 year Estimate for Build Out Over Time</b>							
	<b>Estimated Value</b>	<b>Property Class</b>	<b>Mill Levy</b>	<b>Est. Property Tax</b>	<b>Annual Increment</b>	<b>Increment Years</b>	<b>Total Rebate</b>
Install Infrastructure	\$ -			\$ -		15	\$ -
16 Duplexes, 8 SFH @ 179,99	\$ 4,799,200.00	11.5%	0.14872	\$ 82,079.76	\$ 82,045.70	14	\$ 1,148,639.83
10 SFH @ 179,99, 16 SFH @ 189,900, 2 SFH @ 199,9000	\$ 5,237,200.00	11.5%	0.14872	\$ 89,570.78	\$ 89,536.73	13	\$ 1,163,977.47
						<b>Total</b>	<b>\$ 2,312,617.29</b>

If the single family homes are appraised at \$179,900, \$189,900, and \$199,900 and the duplexes are appraised at \$210,000.00, and the project is built out over approximately three years, the increment tax for 15 years would total approximately \$2,312,607.29. This does not exceed the amount of estimate eligible expenses.

**DEVELOPMENT PLAN – EXHIBIT C  
DEVELOPMENT AGREEMENT**

**Development Agreement  
CLARION PARK ESTATES**

**THIS DEVELOPMENT AGREEMENT** (hereinafter “Agreement”), entered into this 18<sup>th</sup> day of September, 2014, by and between the **CITY OF GARDEN CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and Samy’s Development, LLC (hereinafter “Developer”).

**RECITALS**

- A. WHEREAS**, City and Developer (hereinafter “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of a residential development to be known as “Clarion Park Estates” (hereinafter “the Development”); and,
- B. WHEREAS**, Developer is the title owner of real property located within the boundaries of City and described on *Exhibit A*, further described as Clarion Park Estates, attached hereto and incorporated herein by reference (hereinafter “the Property”); and,
- C. WHEREAS**, City has adopted regulations concerning development within its corporate limits, consisting of Development Policy, Zoning and Subdivision Regulations, Floodplain Regulations and any amendments thereto adopted and in place upon approval of this Agreement.
- D. WHEREAS**, Developer desires to develop the Property by construction of single family homes and duplexes and all related internal infrastructure improvements, all as more fully described herein; and,
- E. WHEREAS**, City has established and recognizes the zoning as follows:
  - 1. Single Family (R-1) – Lots 1-10, Block 1; Lots 1-12, Block 2; Lots 1-8, Block 3; Lots 1-7, Block 4; Clarion Park Estates, Ordinance No. 2657-2014.
  - 2. Multiple Family (R-3) – Lots 1-8, Block 5; Lots 1-8, Block 6; Clarion Park Estates, Ordinance No. 2658-2014.
- F. WHEREAS**, City has approved a Preliminary Plat for Clarion Park Estates. The Preliminary Plat, which includes the entire Property, illustrates the design, uses and densities that should be allowed to develop the Property.
- G. WHEREAS**, City has also approved a Final Plat for **Clarion Park Estates** (“Final Plat”), a copy of which Final Plat is attached as *Exhibit C*.
- H. WHEREAS**, City has determined that the construction of the Development will foster the economic development of City and surrounding area of Finney County, Kansas; and,
- I. WHEREAS**, the Parties hereto are authorized to enter into this Agreement and to complete the responsibilities set forth herein.

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

**1.1 Definitions.** As used in this Agreement, the following words and terms shall have the meaning set forth below:

**Agreement**—means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

**City**—means the City of Garden City, Kansas

**Concept Site Plan**—means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to City, attached as **Exhibit C** hereto and incorporated herein by reference, depicting the conceptual program for construction of the Development Project and the Public Improvements.

**Construction Plans**—means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

**Developer**—means Samy's Development, LLC or permitted successors or assigns in interest.

**Development Area**—means the collective areas described in **Exhibit B** attached hereto and incorporated herein by reference.

**Development Costs**—means the total amount spent or expected to be spent by Developer to construct the Work.

**Development Project**—means quality multi-family residences to be constructed in the Development Area in accordance with the Concept Site Plan.

**Governing Body**—means the City Commission of Garden City, Kansas.

**Internal Infrastructure Improvements**—means the water, sanitary sewer, electric improvements necessary for the Development and located within the boundaries of the Development Area, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for the Development, all as more specifically described on **Exhibit D** attached hereto and incorporated herein by this reference.

**Material Change**—shall mean any change in the Concept Site Plan that significantly affects the nature of the Public Improvements, the number of Units, or increases/decreases the cost of the Development Project by twenty-five thousand dollars (\$25,000.00) or more for each change.

**Mayor**—means the Mayor of Garden City, Kansas or his duly authorized agent.

**Plans and Specifications**—means the plans and specifications for the Public Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to City.

**Project Costs**—means all costs associated with the completion of the Public Improvement and all associated legal, engineering, and other soft costs as described on the cost estimates set forth on **Exhibit E** attached hereto and incorporated herein by this reference.

**Property**—means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests, and such other like or similar interests) on which the Development Project will be located, more specifically described in **Exhibit A** attached hereto and incorporated by this reference.

**Public Improvements**—means the electric, sewer, and water improvements which will be owned, operated and maintained by the City of Garden City.

**Related Third Party**—means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

**Rural Housing Incentive District**—means a rural housing incentive district to be created by the City for the Development Project pursuant to the Kansas Rural Housing Incentive District Act.

**Substantial Completion**—means the stage in the progress of the Work when the Work or designated portions thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that Developer can occupy or utilize the Work for its intended purpose.

**Unit**—means each individual apartment unit in a multi-family residence development.

**Work**—means all work necessary to prepare the Property and to construct the Development Project and the Public Improvements, including; (1) demolition and removal of certain existing improvements located on the Property; (2) construction, reconstruction and/or relocation of utilities; (3) construction of the multi-family residences and structures, including surface parking facilities, and screening and site landscaping on the Property, as described in the Concept Site Plan; and (4) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

## ARTICLE II

### RURAL HOUSING INCENTIVE DISTRICT

**2.1 PRELIMINARY RESOLUTION.** Governing Body has heretofore adopted Resolution No. 2541-2013 on August 20, 2013, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in City and declaring intent to establish Rural Housing Incentive Districts within City, which would include the Property.

**2.2 DEPARTMENT OF COMMERCE FINDING.** Pursuant to the resolution described in *Section 2.1* hereof, City caused to be prepared a Housing Needs Analysis and forwarded the same with said resolution, to the Kansas Secretary of Commerce. On October 1, 2013, the Kansas Secretary of Commerce issued a letter to City making certain findings required by the Rural Housing Incentive District Act, and approved City's ability to establish a Rural Housing Incentive District.

**2.3 FURTHER PROCEEDINGS.** The City has caused to be prepared a Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, adopted a resolution calling a public hearing relative to such Development Plan, conducted a public hearing, and will pass an ordinance approving the Development Plan and establish a Rural Housing Incentive District that includes the Property. The Rural Housing Incentive District will be deemed to be established at the time said ordinance is passed by the Governing Body. The Parties acknowledge that the creation of the Rural Housing Incentive District is subject to nullification in the manner set forth in K.S.A. 12-5246

### ARTICLE III

#### CONSTRUCTION OF THE PROJECT AND INTERNAL INFRASTRUCTURE IMPROVEMENTS

**3.1 Development Project Construction Schedule.** Developer shall commence construction of the Development Project and Internal Infrastructure Improvements within the Development Area, not more than sixty (60) days after the Rural Housing Incentive District ordinance is passed by the Governing Body. Developer will diligently pursue Substantial Completion of the Development Project.

**3.2 CONSTRUCTION OF THE DEVELOPMENT PROJECT.** Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans. The Developer will begin construction of the housing structures not more than ninety (90) days after completion of the Infrastructure Improvements. The Developer agrees to continuously construct the structures until no less than two-thirds of lots in each zoning district have developed housing structures. It is the intent of the Developer to complete all housing structures in succession. However, the City and Developer recognize there may be conditions that prevent completion of all structures in succession. Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans.

**3.2.1 CONSTRUCTION CONTRACTS; INSURANCE.** Developer may enter into one or more construction contracts to complete the Development Project. Prior to the commencement of construction of the Development Project, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance as provided in *Section 5.8* hereof and shall deliver evidence of such insurance to City. Developer shall

require that the insurance required is maintained by any such contractor for the duration of the construction of the Development Project of part thereof, if such contract relates to less than all of the Development Project. If Developer serves as general contractor for the Development Project, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

**3.3 CONCEPT SITE PLAN.** Developer, at its cost, has prepared a Concept Site Plan. Said Concept Site plan is hereby approved by the Parties. Developer may not make Material Changes to the Public Improvements or reduce the number of Units on the Concept Site Plan without the advance written consent of City

**3.4 CONSTRUCTION OF INTERNAL INFRASTRUCTURE IMPROVEMENTS.** Developer shall construct, at its cost, the Internal Infrastructure Improvements in a good and workmanlike manner in accordance with the Plans and Specifications approved by City consistent with the construction of the Development Project so that the Substantial Completion of the Internal Infrastructure Improvements associated with the Development Project shall be completed on or before Substantial Completion of the Development Project and in accordance with the Subdivision and Zoning Regulations or as approved by the Governing Body.

**3.4.1 ACQUISITION OF EASEMENTS; PERMITS.** Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the Internal Infrastructure Improvements and City will cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements shall be considered a Project Cost. City shall cooperate with Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.

**3.4.2 CONSTRUCTION CONTRACTS; INSURANCE.** Developer may enter into one or more construction contracts to compete the Work for the Internal Infrastructure Improvements. Prior to the commencement of construction of the Internal Infrastructure Improvements, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage as provided in **Section 5.9** hereof and shall deliver evidence of such insurance to City. Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Internal Infrastructure Improvements or part thereof, if such contract relates to less than all of the Internal Infrastructure Improvements. If Developer serves as general contractor for the Internal Infrastructure Improvements, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services. Public bidding will not be required for the improvements directly undertaken by the Developer; however, all plans for public improvements shall require approval of City staff and comply with City inspection and testing requirements.

**3.4.3 REIMBURSEMENT/COST PAYMENT PROCESS.** All requests for reimbursement or payment of Project Costs from the City Project Fund shall be made in a Certificate of Project Costs in substantially the form attached hereto as *Exhibit F*, which Certificate shall be signed by the Developer

Representative. The Developer shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, or other information reasonably requested by the City to confirm that such costs were incurred, and are Project Costs which, together with previous requests for payments, do not exceed the budgeted amount for the applicable work as shown on the Project Budget. The Developer may submit electronic documentation, provided that original documents are also delivered to the City by mail or delivery. Certificates of Project Costs may be submitted not more frequently than once per month and payment of Project Costs shall occur once per month.

The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Project Costs is submitted, to examine the supporting documentation and others' records relating to all expenses related to the invoices to be paid to determine that (1) the request constitutes Project Costs; (2) the expense was incurred; (3) no Developer Event of Default is outstanding, and no fact or circumstance exists which upon notice and the passage of time, would ripen into a Developer Event of Default; and (4) there is no fraud on the part of the Developer. The City may request and obtain from the Developer and other parties such other information as is reasonably necessary for the City to evaluate compliance with the terms of this Agreement.

The City shall have seven (7) business days after receipt of a Certificate of Project Costs and all other documentation referred to above to review and respond by written notice to the Developer indicating acceptance of the Certificate, disapproval of the Certificate, or documenting any deficiency in such Certificate. If the submitted Certificate and supporting documentation are acceptable the City shall approve the Certificate and make, or cause to be made, direct payment of invoices or reimbursement or Project Costs paid by Developer from the Project Fund. If the City notifies the Developer of any deficiency or of its disapproval of a Certificate of Project Costs, the Developer shall have the opportunity to cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. City shall notify Developer within five (5) business days of the receipt of Developer's response of its acceptance of the response or of any remaining deficiency. If an outstanding deficiency remains, the City shall reimburse the Developer for any approved Project Costs described in such Certificate, minus the disputed amount and the balance of the disputed amount shall carry forward until the deficiency is cured or otherwise resolved.

Right to Inspect and Audit. The Developer agrees that, up to one (1) year after a Project Cost is submitted to the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to such Project Cost (including, but not limited to, general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, and paid receipts and invoices, which relate to such Project Cost).

**3.4.4 CERTIFICATION OF SUBSTANTIAL COMPLETION.** Promptly after Substantial Completion of the Work with respect to the Internal Infrastructure Improvements and/or Public Improvements, or a phase thereof, in accordance with the provisions of this Agreement, Developer will furnish to City a Certificate of Substantial Completion in the form attached hereto as **Exhibit E**. City shall, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it

deems necessary to verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion. Each Certificate of Substantial Completion shall be deemed accepted by City unless, prior to the end of such thirty (30) day period after delivery to City of each Certificate of Substantial Completion, City furnishes Developer with specific written objections to the status of the Work, describing such objections and the written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. At Substantial Completion of the Internal Infrastructure Improvements, Developer will dedicate to City, and City will accept, title to the Public Improvements designated on **Exhibit D**. Following said dedication, City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and shall maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar public improvements in city. Notwithstanding the foregoing, Developer may, at its sole discretion and expense, enhance the maintenance of operation of the Internal Infrastructure Improvements for the betterment of the Development Project.

## **ARTICLE IV**

### **FINANCING OBLIGATIONS**

**4.1 FINANCING OF PUBLIC IMPROVEMENTS.** All costs of the Internal Infrastructure Improvements shall be paid in cash or financed by Developer. City agrees to pay to Developer, in reimbursement of all or a portion of the Project Costs, those amounts paid to the Treasurer of the City, as a result of this Project, pursuant to K.S.A. 12-5250 (b)(2)(A). These payments shall be made within thirty (30) days of receipt of such funds from the County Treasurer beginning in 2014 and shall continue until such time as the Project Costs have been fully reimbursed to Developer, but not to exceed fifteen (15) years from the date of the establishment of the Rural Housing Incentive District. City shall have no liability and/or responsibility to Developer for any payment greater than the amounts received from the Finney County Treasurer as mandated in K.S.A. 12-5250(b)(2)(A).

**4.2 CREATION OF PROJECT FUND.** The City shall establish and maintain a separate fund and account known as the Clarion Park Estates Fund (the Project Fund). All RHID Revenue collected by the City shall be deposited in the Project Fund.

All disbursements from the Project Fund shall be made only to pay Project Costs allowed under the RHID program. The City shall have sole control of the disbursements from the Project Fund.

Any surplus amounts of RHID revenue, after all Project Costs have been reimbursed, shall be used as determined by the City for any purpose authorized by the RHID Act and laws of the State.

## **ARTICLE V**

### **GENERAL PROVISIONS**

**5.1 DEVELOPMENT RIGHTS.** Developer and City acknowledge and agree that upon recordation of the Final Plat, City shall not, unless requested by Developer, rescind or modify the approved Zoning during the term of this Agreement.

**5.2 CITY'S RIGHT TO TERMINATE.** In addition to all other rights of termination as provided herein, City may terminate this Agreement at any time if Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from City of such default or breach.

**5.3 DEVELOPER'S RIGHT TO TERMINATE.** In addition to all other rights of termination as provided herein, Developer may terminate this Agreement at any time if City defaults in or breaches any material provision of this Agreement (including any City default under *Article IV* hereof) and fails to cure such default or breach within thirty (30) days after receipt of written notice from Developer of such default or breach.

**5.4 SUCCESSORS AND ASSIGNS.**

- a. This agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.
- b. Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after completion of the Development Project, whereupon the Party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although prior to Substantial Completion of the Improvements to such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, however, that the buyer, transferee or assignee shall be financially solvent as demonstrated to City.
- c. Until Substantial Completion of the Development Project has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project, all in accordance with this Agreement. Notwithstanding the foregoing, Developer may be permitted to subcontract the construction of any portion of the Development Project without the consent of City as long as Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, City hereby approves, and no prior consent shall be required in connection with, (a) the right of Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in the Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the

Development Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment; (b) the right of Developer to assign Developer's rights, duties and obligations under the Agreement to a Related Party; or (c) the right of Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project; provided that in each such event Developer named herein shall remain liable hereunder for the Substantial Completion of the Development Project, and shall be released from such liability hereunder only upon Substantial Completion of the Development Project.

**5.5 REMEDIES.** Except as otherwise provided in this Agreement and subject to Developer's and City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) shall, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and there upon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the Rural Housing Incentive District. For purposes of this **Section 5.4**, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same.

**5.6 FORCE MAJEURE.** Neither City nor Developer nor any successor in interests shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage of delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by Developer, and further provided that Developer notifies city in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**5.7 NOTICES.** Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United State first class mail, postage prepaid, or delivered personally,

- a. In the case of Developer, to:  
Samy's Development, LLC

2125 Buffalo Heights  
Garden City, KS 67846

- b. In the case of City, to:  
City of Garden City, Kansas  
301 N. 8<sup>th</sup> Street  
Garden City, KS 67846  
Attention: City Clerk  
Phone: (620)276-1170  
Fax: (620)276-1173

Or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this **Section 5.6**.

**5.8 CONFLICT OF INTEREST.** No member of the Governing Body or any branch of City's government who has any power of review or approval of any of Developer's undertakings, or of City's contracting for goods or services for the Development, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interests shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. City represents to Developer that no such conflicts of interest exist as of the date hereof.

**5.9 INSURANCE; DAMAGE OR DESTRUCTION OF DEVELOPMENT PROJECTS.**

- a. Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of City, shall furnish City with proof of payment of premiums on:
- (i.) Builder's Risk insurance, written on the so called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of City shall be protected in accordance with a clause in form and content satisfactory to City; and,
  - (ii.) Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Five Million Dollars (\$5,000,000.00) for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to

accomplish the above required limits, an umbrella excess liability policy may be used); and

(iii.) Workers Compensation insurance, with statutorily required coverage.

- b. The policies of insurance required pursuant to clauses (i.) and (ii.) above shall be in form and content reasonably satisfactory to City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policy of insurance delivered pursuant to clause (i.) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this section shall name City as an additional insured. Developer shall deliver to City evidence of all insurance to be maintained hereunder.

**5.10 INSPECTION.** Developer shall allow City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as City determines is reasonable and necessary to verify Developer's compliance with the terms of this Agreement.

**5.11 CHOICE OF LAW.** This Agreement shall be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

**5.12 ENTIRE AGREEMENT: AMENDMENT.** The Parties agree that this Agreement and the Development Plan constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

**5.13 COUNTERPARTS.** This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instruments.

**5.14 SEVERABILITY.** If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**5.15 REPRESENTATIVES NOT PERSONALLY LIABLE.** No elected or appointed official, agent, employee or representative of City shall be personally liable to Developer in the event of any default or breach by any Party under this Agreement or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

**5.16 LEGAL ACTIONS.** If a third party brings an action against city, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this

Agreement, or the ordinance approving this Agreement, Developer may, at Developer's option but only with City's consent, assume the defense of such claim or action (including without limitation, to settle or compromise any claim or action for which Developer has assumed the defense) with counsel of Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent City and Developer in any such proceeding; provided, Developer and its counsel shall consult with City throughout the course of any such action and Developer shall pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City shall be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City shall be paid by City.

**5.17 RELEASE AND INDEMNIFICATION.** The indemnifications and covenants contained in this **Section 5.16** shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of **subsection 5.16.7** of this Agreement.

- a. Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable to Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.
- b. Developer releases from, agrees to indemnify and hold harmless City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorney's fees, except for those matters rising out of the willful and/or wanton negligence of City and its governing body members, officers, agents, servants, and employees.
- c. City and its Governing Body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of City and its Governing Body members, officers, agents, servants and employees.
- d. All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of

City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.

- e. No official, employee or representative of City shall be personally liable to Developer in the event of a default or breach by any Party to this Agreement.
- f. Developer releases from and covenants and agrees the City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold City, its Governing Body, members, officers, employees, agents and independent contractors harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on, or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of Developer or its agents in connection with or leading to the Development Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly out of the willful and/or wanton negligence of City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by city following termination of this Agreement as Development Project or portion thereof.

**5.18 COST OF THE LEGAL FEES.** Upon execution of this Agreement, Developer shall reimburse City for all legal and professional Costs, fees and expenses incurred by City with regard to the preparation of this Agreement and any and all other Ordinances, Resolutions or other documents necessary for implementation of the Rural Housing Incentive District as well as for representation and appearances of legal counsel at any hearings or proceedings required to implement the Rural Housing Incentive District or the Project. All such reimbursement paid by Developers shall be considered Project Costs.

**5.19 RECORDATION/AGREEMENT TO RUN WITH THE LAND AND EFFECT.** A Notice of this Agreement shall be recorded with the Register of Deeds, Finney County, Kansas, not later than ten (10) days after its execution. **This Agreement shall constitute covenants that run with the land and are binding on successors in interest.** This Agreement is too voluminous and/or not in an appropriate form for recording, shall be available for review and inspection during normal business hours at:

City of Garden City, Kansas  
Planning & Community Development Department  
301 N. 8<sup>th</sup> Street

**P.O. Box 998  
Garden City, Kansas 67846**

**5.20 SURVIVAL.** Notwithstanding the expiration, termination or breach of this Agreement by either Party, the agreements contained in **Section 5.16** of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by Parties hereto.

## **ARTICLE VI**

### **REPRESENTATIONS OF THE PARTIES**

**6.1 REPRESENTATIONS OF CITY.** City hereby represents and warrants that to the best of its collective knowledge and belief it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of the Agreement, and all of the foregoing have been or will be, duly and validly authorized and approved by all necessary city proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

**6.2 REPRESENTATIONS OF DEVELOPER.** Developer hereby represents and warrants it has full corporate power to execute and Deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

**IN WITNESS WHEREOF**, City and Developer have caused this Agreement to be executed in their respective names and City has caused its seal to be affixed thereto, and attested as to the date first above written.

**CITY OF GARDEN CITY, KANSAS**

By: \_\_\_\_\_  
Roy Cessna, Mayor

Dated: September \_\_\_\_, 2014

**ATTEST: (SEAL)**

\_\_\_\_\_

Celyn N. Hurtado, City Clerk

**Samy's Development, LLC**

By: \_\_\_\_\_  
Amro Samy

Dated: September \_\_\_\_, 2014

**ACKNOWLEDGEMENT**

**STATE OF KANSAS**        )  
                                  )  
**COUNTY OF FINNEY**    )        **SS.**

This instrument was acknowledged before me on Date\_\_\_\_\_ by Roy Cessna, MAYOR and Celyn Hurtado, CITY CLERK of the City of Garden City, Kansas, a Kansas municipal corporation.

Notary Public

My Appointment Expires:

**ACKNOWLEDGEMENT**

**STATE OF KANSAS**        )  
                                  )  
**COUNTY OF FINNEY**    )        **SS.**

The foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_, by Amro Samy, **Samy’s Development, LLC.**

Notary Public

My Commission Expires:

**NOTICE OF AGREEMENT**

Public notice is hereby given that the City of Garden City, Kansas, a municipal corporation, has entered into a certain Development Agreement dated \_\_\_\_\_, with Samy’s Development, LLC., therein described as “Developer”, covering and upon certain Property described as: **Clarion Park Estates** according to the recorded plat thereof.

Said Development Agreement shall exist for a term of **Five (5) years**, subject to provisions therein contained with respect to extension of such agreement, and provides for the development of and provision for infrastructure improvement to such Property, in addition to various other covenants, terms and conditions.

A copy of said Development Agreement, together with exhibits attached thereto, is and will remain permanently on file in the offices of the City Clerk, and the Planning & Community Development Department, of the City of Garden City, and shall there be available for inspection and copying during normal business hours.

Executed by authority of the Board of City Commissioners of the City of Garden City, Kansas, this \_\_\_\_ day of \_\_\_\_\_, 2014.

**GARDEN CITY, KANSAS**

By: \_\_\_\_\_  
**Roy Cessna, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Celyn Hurtado, CITY CLERK**

**STATE OF KANSAS     )**  
                                  **)     SS.**  
**COUNTY OF FINNEY    )**

This instrument was acknowledged before me on Date \_\_\_\_\_ by Roy Cessna, MAYOR and Celyn Hurtado, CITY CLERK of the City of Garden City, Kansas, a Kansas municipal corporation.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

## **SCHEDULE OF EXHIBITS OF THE DEVELOPMENT AGREEMENT**

Exhibit A	Property Description
Exhibit B	Map of Rural Housing Incentive District Boundaries for CLARION PARK ESTATES Project
Exhibit C	CLARION PARK ESTATES Site Development Plan
Exhibit D	Infrastructure Improvements
Exhibit E	Eligible costs for CLARION PARK ESTATES Project
Exhibit F	Certification of Project Costs Form
Exhibit G	Certification of Substantial Completion Form

## EXHIBIT A

### PROPERTY DESCRIPTION

A tract of land in the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas, more particularly described as follows: commencing at the East Quarter corner of Section 16, Township 24 South, Range 32 West, thence at an assumed bearing of North 0°00'00" East along the East section line of Section 16 for a distance of 30.00 feet to the point of beginning; thence at a bearing of North 89°50'32" West for a distance of 300.00 feet; thence along the East line of USD 457 property at a bearing of North 0°01'28" East for a distance of 630 feet; thence at a bearing of South 89°50'32" East for a distance of 299.72 feet; thence South along the East line of Section 16 at a bearing of South 0°00'00" West for a distance of 630.00 feet to the point of beginning.

EXCEPT Tracts deeded to the City of Garden City, Kansas by Deed filed in Book 273, page 166, described as follows:

The Easterly 35 feet of the Northerly 333.88 feet of the Southerly 659.65 feet of the Northeast Quarter (NE/4) of Section 16, Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., Finney County Kansas; and

The Easterly 40 feet of the Northerly 261.00 feet of the Southerly 325.77 feet of the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., and

The Easterly 75 feet of the Southerly 64.77 feet of the Northeast Quarter (NE/4) of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas.

AND,

A tract of land located in Section Sixteen(16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., in Finney County, Kansas, more particularly described as follows:

Beginning at the East Quarter Corner of Section Sixteen (16), Township Twenty-four (24) South, Range Thirty-two (32) West of the 6<sup>th</sup> P.M., Finney County, Kansas, thence North along the East Section Line of said Section Sixteen (16), a distance of 660 feet; thence West to the West right of way line of Jennie Barker Road 30.00 feet, said point also being the true point of beginning; thence North 660 feet; thence West 660 feet; thence South 660 feet; thence East 660 feet to the true point of beginning. Except all water rights and rights to appropriate water.

And EXCEPT the Easterly Five (5) Feet deeded to the City of Garden City, Kansas by Deed filed in Book 273, Page 167.

EXHIBIT B

MAP OF RURAL HOUSING INCENTIVE DISTRICT BOUNDARIES FOR CLARION PARK ESTATES



**EXHIBIT C**

**CLARION PARK ESTATES SITE DEVELOPMENT PLAN**

## **Exhibit D Infrastructure Improvements**

**Infrastructure improvements.** All infrastructure improvements shall be designed in compliance with standards and specifications of City and applicable state agencies. City shall approve all plans prior to construction. Construction of infrastructure improvements shall not commence until the plans and specifications have been approved by the City Engineer. All infrastructure improvements shall be constructed prior to the issuance of a Certificate of Occupancy on any lot in **Clarion Park Estates**. Below are additional descriptions of the infrastructure improvements to be the responsibility of Developer.

**Sanitary Sewer:** Eight (8) inch sewer mains with service lines to property line(s) pursuant to the on-site Infrastructure Improvement Plan, as approved by the City Engineer and the Director of Public Utilities. Construction plans and specifications shall meet the requirements of the City Engineer and the Director of Public Utilities and KDHE.

**Water Distribution:** Eight (8) mains with service lines to property line(s), including looping, as approved by the City Engineer and the Director of Public Utilities. Eight (8) inch water lines, unless the City Water Master Plan or Water System Model indicates requirement for larger, shall be constructed to service the subdivision. Construction plans and specifications shall meet the requirements of the City Engineer and the Director of Public Utilities, and KDHE.

**Streets:** Design standards subject to provisions of the Subdivision Regulations and the 2006 General Surface Improvements Handbook. Street and storm sewer construction plans and specifications shall meet the requirements of the Director of Public Works. Sidewalks shall be required on all interior streets as a condition of building permits, and shall meet the requirements of the 2006 General Surface Improvements Handbook. Warrior Street, Amy Street, and Clarion Circle shall be thirty-one (31') feet wide measured from back of curb to back of curb paved with either 7" concrete or 6" asphalt constructed on a 6" AB-2 base. The bulb in Clarion Circle shall be paved with 7" concrete.

The initial installation of traffic control and street name signs shall be at Developer's expense. Should the Developer desire non-standard street name signing or posts, replacement of damaged or stolen signage shall be at the expense of the Developer or homeowner's association, if any.

**Storm Water Drainage and Erosion Control:** Storm water drainage plans, an erosion control plan and a Storm Water Pollution Prevention Plan (SWPPP), as applicable, shall conform to the following requirements for approval by the City Engineer. Developer shall submit a Notice of Intent (NOI) for storm water discharge associated with construction activity to KDHE and provide a copy to the City Stormwater Coordinator.

- Erosion and Sediment Control Guidelines and Specifications per Sections 38-160 *et seq*, Code of Ordinances, and the *EROSION & SEDIMENT CONTROL MANUAL CITY OF GARDEN CITY, 2008 MANUAL*
- Post Construction Stormwater Guidelines and Specifications per Sections 38-190 *et seq*, Code of Ordinances, and the *POST CONSTRUCTION STORMWATER BEST MANAGEMENT PRACTICES MANUAL, CITY OF GARDEN CITY, 2009*

**Electrical Distribution Infrastructure** improvements. City policy provides for the installation of all electrical distribution infrastructure improvements where there exists single phase and secondary underground or overhead distribution facilities.

“On-site” refers to facilities directly associated with service to the development or building and/or facilities physically located on the development or building site. These costs may include the relocation or iteration of existing electric facilities necessitated by the project. The cost will be the total expense of material, labor, equipment, city subcontracted work associated with the project, as well as any required engineering/administration costs, all based upon standard estimating procedures established by the electric utility.

**Solid Waste:** Collection for the duplexes in Clarion Park Estates shall be with individual poly carts. Residents shall be responsible for request for service. Collection for the single family homes in Clarion Park Estates shall be with shared dumpsters in the alleys.

**Parks & Open Space:** Cash-in-lieu of land dedication of two hundred dollars (\$200.00) per lot or ten thousand four hundred dollars (\$10,400.00) shall be paid by the Developer upon filing of the plat.

**Fencing:** There shall be no obstructive fencing blocking access to and within the twenty (20) foot easements on lots 1-8 of both blocks 5 and 6 as to allow service vehicles to access the rear yard utilities.

**Other:** Developer shall be responsible for the cost of installation of gas lines, cable services and telephone lines, in accordance with utility company installation policy and City Code of Ordinances of a size adequate to service the Approved Preliminary Plat as determined by the utility company and City.

**EXHIBIT E**  
**ELIGIBLE COSTS FOR**  
**CLARION PARK ESTATES PROJECT**

Clarion Park Estates Site Work Estimates:

Paving	\$378,340.00
Excavation	\$29,200.00
Erosion and Sediment Control	\$3,000.00
Traffic Control	\$2,500.00
Construction Staking	\$5,480.00
Sidewalks	\$120,480.00
Alley Surfacing	\$15,000.00
Water	\$112,500.00
Sanitary Sewer	\$198,000.00
Site Improvements/Detention Pond	\$205,000.00
Electric	\$241,500.00
Landscaping	\$375,000.00
Monuments	\$30,000.00
Fencing	\$125,800.00
Architectural Fees	\$45,000.00
Engineering Fees	\$30,000.00
Terracon Soil Samples	\$8,000.00
Construction Management Fees	\$200,000.00
Financing	\$41,524.60
Contingency and Miscellaneous	\$20,767.10
Land Acquisition	\$350,000.00
Site Preparation	\$150,000.00
<b>TOTAL</b>	<b>\$2,687,091.70</b>

Upon substantial completion, public improvements shall be dedicated to the City of Garden City.

**EXHIBIT F**

**CERTIFICATION OF PROJECT COSTS FORM**

**CLARION PARK ESTATES DEVELOPMENT AGREEMENT**

To: City Manager; City Engineer  
Garden City, Kansas

RE: Clarion Park Estates Development Agreement

*Terms used in this Certificate and not otherwise defined here shall have the meanings given them in the Clarion Park Estates Development Agreement dated as of \_\_\_\_\_, 2014 ("Agreement") between the City of Garden City, Kansas and Samy's Development, LLC.*

In connection with the Agreement, the undersigned Developer Representative hereby certifies as follows:

1. Each item listed in Schedule 1 hereto is a Project Cost and was incurred in connection with the Project.
2. These Project Costs are payable to the parties shown on Schedule I or have been paid by the Developer and are reimbursable under the Agreement.
3. Itemized invoices, receipts or other evidence of such Project Costs are enclosed.
4. Each item listed in Schedule 1 has not previously been paid or reimbursed from money derived from City Obligations Project Fund, and no part thereof has been included in any other certificate previously filed with the City.
5. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
7. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement and the approved plans for the work.

8. The Developer is not in default or breach of any term or condition of the Agreement or the Development and Funding Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SAMY'S DEVELOPMENT, LLC

By \_\_\_\_\_  
Name (Printed) \_\_\_\_\_  
Title \_\_\_\_\_

Approved for payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
Steven F. Cottrell, P.E.  
City Engineer



**EXHIBIT G**

**CERTIFICATION OF SUBSTANTIAL COMPLETION FORM**

The undersigned, on behalf of Samy's Development, LLC (the Developer), pursuant to Section 3.4.3 of the Development Agreement dated as of September 18, 2014 (the Development Agreement) by and among the City of Garden City, Kansas, and the Developer, hereby certifies as follows. All capitalized terms used herein shall have the meaning attributable to such terms in the Development Agreement.

1. The Work with respect to the Internal Infrastructure Improvements in Development Project is sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. The Work has been completed in a good and workmanlike manner.
3. There are no mechanic's or materialmen's liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for the Work which could form the basis of a mechanic's, materialmen's or other statutory lien against the Property have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated: \_\_\_\_\_

Samy's Development, LLC

By: \_\_\_\_\_

Name:

Title: