

COST PARTICIPATION AGREEMENT FOR FRONTAGE ROAD PROJECT

This PARTICIPATION AGREEMENT FOR FRONTAGE ROAD PROJECT (the “Agreement”) is made on or as of the ____ day of _____, 2014, by and between **THE CITY OF NORMAN**, an Oklahoma municipal corporation (the “City”), the **NORMAN TAX INCREMENT FINANCE AUTHORITY**, an Oklahoma public trust (the “Authority”), **UNIVERSITY NORTH PARK, LLC**, an Oklahoma limited liability company (“UNP”), which is a wholly-owned subsidiary of The University of Oklahoma Foundation, Inc. (the “OU Foundation”) (as defined herein), and **NORMAN ECONOMIC DEVELOPMENT COALITION, INC.**, an Oklahoma not-for-profit corporation (“NEDC”), which are collectively herein referred to as “Parties.”

WITNESSETH:

WHEREAS, the City, by Ordinance No. O-0506-66, adopted May 23, 2006 (the “TIF Ordinance”), pursuant to the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 851, *et seq.*, adopted and approved the Norman University North Park Project Plan (the “Project Plan”) and the project therein described (the “Project”); and

WHEREAS, the Project supports achievement of the City’s economic development and redevelopment objectives for the Project Area, including reversal of urban stagnation, creation of a catalyst for expanding employment, attraction of major investment, preservation and enhancement of the tax base, and facilitation of investment, development and economic growth otherwise difficult, unlikely or impossible without the Project; and

WHEREAS, acting pursuant to the Master Agreement, the City has agreed to fund or cause to be available for funding, on terms set forth in Development Agreement No. 1 for Initial Project Activities, an amount of up to \$11,550,000 (plus engineering costs) for certain identified Traffic and Roadway Improvements; and

WHEREAS, acting pursuant to the Master Agreement, the parties agreed to Development Agreement No. 5, setting forth, among other things, sequencing obligations of future traffic and roadway improvements and providing for the release of certain accumulated TIF revenues in the amount of \$1,525,000 for construction of the remainder of the I-35 Frontage Road from Conference Center Drive to 24th Avenue NW, a first priority road improvement identified for completion in 2014 (the “Frontage Road Project”); and

WHEREAS, the design of the Frontage Road Project has been completed and includes storm sewer improvements that exceed City standards and specifications to the benefit of UNP and also includes the intersection of the Frontage Road with 24th Avenue NW, said design also includes certain intersection improvements necessitated by and benefiting development of the ED Tract.

NOW THEREFORE in consideration of the premises and mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the others as follows:

ARTICLE I. NATURE OF THE AGREEMENT

SECTION 1.1. DEFINED TERMS. In this Agreement, capitalized terms, words, and designations shall have the same meaning as defined in the TIF Ordinance, the Project Plan, and the Development Agreements. Some of those definitions and certain definitions applicable to this Agreement include the following:

“Authority” shall mean the Norman Tax Increment Finance Authority, a public trust having the City as beneficiary thereof.

“City” shall mean The City of Norman, Oklahoma, an Oklahoma municipal corporation, acting by and through its City Council.

“Development Agreement” shall mean one or more of the agreements described in Exhibit A. References to a Development Agreement by number (such as “Development Agreement #1”) shall refer to the Development Agreement so identified on Exhibit A.

“ED Tract” shall mean that property in the Project Area that NEDC has purchased from UNP pursuant to the Amended and Restated Purchase and Sale Agreement dated October 15, 2010 and the Purchase and Sale Agreement for the Remaining Economic Development Tract dated December 5, 2013.

“Increment District” shall mean Increment District No. 2, City of Norman, created pursuant to the TIF Ordinance and the Local Development Act, generally comprised of University North Park.

“Master Agreement” shall mean the Master Operating and Development Agreement dated August 22, 2006.

“Parties” shall mean the City, the Authority, UNP and NEDC.

“Project” shall mean the design, financing, and construction of certain improvements, the use of certain Tax Increments, and all other activities contemplated by the Project Plan.

“Project Area” shall have the meaning set forth in the Project Plan.

“Project Costs” shall mean, generally, all costs authorized by the Project Plan, specifically including costs paid from the Ad Valorem Tax Increment, the Economic Development Sales Tax Increment, and/or the Retail Sales Tax Increment, as contemplated by the Project Plan and the Master Agreement, and including but not limited to the following (as the following terms are defined in the Master Agreement): Initial Project Activity Costs (which include Traffic and Roadway Improvements Project

Costs), Legacy Park Project Costs, Conference Center and Cultural Facilities Project Costs, Lifestyle Center Project Costs, Economic Development Project Costs, and financing costs, including costs of issuance, necessary and appropriate reserves, and payment of principal and interest.

“Project Plan” shall mean the Norman University North Park Project Plan adopted and approved by the City on May 23, 2006, pursuant to the TIF Ordinance and the Local Development Act, as amended.

“TIF Ordinance” shall mean Ordinance No. O-0506-66, as amended by Ordinance No. O-0809-8, of the City adopted on May 23, 2006, establishing the Increment District and adopting the Project Plan.

“University North Park” shall mean, generally, the area bordered by I-35 on the west, Tecumseh Road on the north, Max Westheimer Airpark on the east, and Robinson Street on the south, and comprising the Increment District. University North Park includes approximately five hundred eighty-five (585) total gross acres of land.

“UNP” shall mean University North Park, LLC, an Oklahoma limited liability company, which is a wholly-owned subsidiary of the OU Foundation.

SECTION 1.2. PURPOSE AND SCOPE OF THE AGREEMENT. The purpose and scope of this agreement is to set forth obligations related to funding portions of the Frontage Road Project.

II. OBLIGATIONS RELATED TO THE FRONTAGE ROAD PROJECT

SECTION 2.1. FRONTAGE ROAD PROJECT DESIGN. The Parties have reviewed the design for the Frontage Road Project, inclusive of the intersection of the Frontage Road with 24th Ave NW at Corporate Center Drive, and agree that the design of the Frontage Road Project as shown in Bid No. 1314-46 and attached as Exhibit A meets the goals of the development as set forth in the various agreements. The Parties recognize and agree that although sidewalks were included Bid No. 1314-46, sidewalk construction along the frontage road will not be included in the Authority’s award of said bid.

SECTION 2.2. FRONTAGE ROAD PROJECT COSTS. The Parties recognize that the construction costs for the Frontage Road Project exceeds both preliminary estimates and the accumulated TIF revenues released for this project pursuant to Development Agreement No. 5. The Parties further recognize that some of the excess costs are related to storm sewer improvements, additional intersection improvements, and the addition of a roundabout.

SECTION 2.2. COMPLETION DEADLINE. The Parties recognize that Development Agreement No. 5 sets forth a deadline for completion of the Frontage Road Project of May 8, 2014. In recognition of a longer than anticipated design period for the Frontage Road Project and the funding challenges associated with the project, the Parties

agree that the deadline for the Frontage Road Project should be extended. The Authority and the City agree to complete the Frontage Road Project as soon as possible but no later than December 31, 2014.

SECTION 2.3. STORM SEWER IMPROVEMENTS. UNP recognizes that the storm sewer improvements included in the Frontage Road Project design were sized to accommodate storm water runoff of the northeastern 12.73 acres of UNP property depicted on Exhibit B when said property is fully developed, as well as other storm water improvements that normally would be accomplished by the developer at a later date. IN order to efficiently use funds available for those public improvements, UNP desires to make all necessary storm water improvements simultaneously with other frontage road extension improvements. Accordingly, UNP agrees to pay for the portion of the storm sewer improvements that accommodate the future development of its properties. Consistent with the goals of the Project Plan to foster economic development and coordinate infrastructure construction in the most efficient, cost effective manner, the Authority and UNP agree as follows:

- (a) Initial Funding. The Authority will initially fund the said storm sewer improvements included in the Frontage Road Project with accumulated TIF Revenues.
- (b) Eligible Costs for Payback. The costs associated with the Frontage Road Project that are subject to reimbursement to the Authority by UNP include the following costs (collectively “UNP Storm Sewer Payback Amount”):
 - (1) Administrative Fee. UNP shall pay an administrative fee of two percent of the construction costs in Section 2.3(b)(2) below. This amount is \$ 7,390.32.
 - (2) Construction Costs. The portion of the Frontage Road Project construction that is subject to reimbursement to the Authority by UNP is \$369,515.80.
 - (3) Inflation/Deflation Annual Adjustment: Beginning on the first anniversary of the Storm Sewer Completion Date (as hereinafter defined), the construction costs in Section 2.3(b)(2) shall be adjusted annually in accordance with the Engineering News Record Construction Cost Index (or a comparable successor regional index) that is utilized by the City of Norman in connection with its water line payback projects. In any given year, the annual adjustment of the Storm Sewer Payback Amount shall not exceed four percent (4%).
- (c) Timing of Payback. UNP agrees to reimburse the UNP Storm Sewer Payback Amount to the Authority upon the first to occur of (1) five (5) years from the date of completion of construction of the Frontage Road Project, as certified by SMC Consulting Engineers, P.C. (the “Storm Sewer Completion Date”), or (2) upon submission of an application for a building permit covering any portion of the 12.73 acre tract owned by UNP and shown on Exhibit C attached hereto.

SECTION 2.4. INTERSECTION IMPROVEMENTS. NEDC recognizes that a portion of the intersection improvements included in the Frontage Road Project are being included in the project due to the development of the Initial ED Tract and the Remaining ED Tract. Therefore, NEDC agrees to pay for the portions of the intersection necessitated by and for the benefit of the ED Tract subject to the following provisions:

- (a) Initial Funding. The Authority will initially fund the said intersection improvements included in the Frontage Road Project with accumulated TIF revenues.
- (b) Eligible Costs for Payback. The portion of the Frontage Road Project that is subject to reimbursement to the Authority by NEDC is \$385,679.80 (the "NEDC Intersection Payback Amount").
- (c) Timing of Payback. NEDC agrees to reimburse the NEDC Intersection Payback Amount to the Authority upon the first to occur of (1) five years from the date of completion of construction of the Frontage Road Project, as certified by SMC Consulting Engineers, P.C., or (2) the submission of a building permit for any portion of the ED Tract.

ARTICLE III. GENERAL PROVISIONS

SECTION 3.1 AUTHORITY'S CONSTRUCTION. All construction undertaken by the Authority pursuant to this Agreement shall be carried out in accordance with plans and specifications approved by the Architectural Review Board established by the First Amended and Restated Declaration of Covenants and Restrictions for University North Park dated March 10, 2006 and recorded in Book 4145 page 213 of the real estate records of Cleveland County, Oklahoma.

SECTION 3.2 COMPETITIVE BIDDING ACT. To the extent required by law, any and all contracts or portions thereof made pursuant to this Agreement shall be made in compliance with the Oklahoma Public Competitive Bidding Act of 1974, 61 O.S. §101, *et seq.*, as amended, including but not limited to any applicable bonding requirements.

SECTION 3.3 APPLICABLE LAW, SEVERABILITY AND ENTIRE AGREEMENT. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

SECTION 3.4 THIRD PARTIES. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

SECTION 3.5 NO PARTNERSHIP CREATED OR JOINT VENTURE CREATED. This Agreement specifically does not create any partnership or joint venture between the Parties hereto, or render any party liable for any of the debts or obligations of any other party.

SECTION 3.6 TIME IS OF THE ESSENCE. The Parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

SECTION 3.7 FORMALITIES AND AUTHORITY. The Parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

SECTION 3.8 NOTICES AND DEMANDS. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

City:	The City of Norman P.O. Box 370 Norman, OK 73070 Attn: City Manager With Copy to: City Attorney
Authority:	Norman Tax Increment Finance Authority P.O. Box 370 Norman, OK 73070 Attn: General Manager With Copy to: General Counsel
UNP:	University North Park, LLC 100 Timberdell Road Norman, OK 73019 Attn: Manager
With copy to:	McAfee & Taft 10th Floor, Two Leadership Square Oklahoma City, OK 73102 Attn: Frank Hill or Richard A. Riggs

NEDC: Norman Economic Development Coalition
 710 Asp Ave., Suite 100
 Norman, OK 73069
 Attn: Executive Director

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

SECTION 3.9 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns.

SECTION 3.10 MODIFICATIONS. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

SECTION 3.11 UNAVOIDABLE DELAYS. The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delay" means a delay beyond the reasonable control of the party obligated to perform the applicable term, covenant, condition or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, any other party to this Agreement (for example, a delay in transfer of possession), strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty, but shall not include delays attributable to financial difficulties of such party.

SECTION 3.12 FURTHER ASSURANCES. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

SECTION 3.13 COUNTERPARTS. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

SECTION 3.14 CONFLICTS. In case of any conflict between this Agreement and the Project Plan, the Project Plan shall control. In case of any conflict between this Agreement and previous Development Agreements, this Agreement shall

control. In the event of any conflict between (i) the Project Plan or any Development Agreement and (ii) the Financing Documents, the Project Plan shall control.

SECTION 3.15 RECITALS. The recitals and certain Sections of this Agreement contain references to various obligations of the parties in one or more of the Development Agreements. The references in this Agreement are included for historical reference purposes only and are not intended to modify the parties' obligations under such Development Agreements which in all respects, except as expressly modified by this Agreement, shall be subject to all applicable terms and conditions in the respective Development Agreements.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the City, the Authority, UNP, and the NEDC, as Parties to this Agreement, have caused this Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF NORMAN, OKLAHOMA

By: _____
Name: Cindy Rosenthal
Title: Mayor

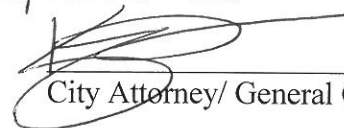
By: _____
Name: Brenda Hall
Title: City Clerk
(SEAL)

NORMAN TAX INCREMENT FINANCE AUTHORITY

By: _____
Name: Cindy Rosenthal
Title: Chairman

By: _____
Name: Brenda Hall
Title: Secretary
(SEAL)

Approved as to form and legality this 17 day of April, 2014.



City Attorney/ General Counsel

UNIVERSITY NORTH PARK, LLC

By: _____
Name: _____
Title: _____

**NORMAN ECONOMIC
DEVELOPMENT COALITION**

By: _____
Name: _____
Title: _____

**EXHIBIT A
DEVELOPMENT AGREEMENTS**

1. Master Operating and Development Agreement dated as of August 22, 2006, by and among the City, UNP and the Developer.
2. Master Financing Agreement for the Norman University North Park Project dated as of February 13, 2007, by and among the City, the Authority, UNP, the OU Foundation, JQH and the Developer.
3. Development Agreement #1 for Initial Project Activities in the Norman University North Park Project dated as of August 22, 2006, by and among the City, the Authority, UNP and the Developer.
4. Development Agreement #2 for the Development of the University North Park Hotel Conference Center Project, as amended by Amendment #1 to Development Agreement #2 for the Development of the University North Park Hotel Conference Center Project, both dated as of June 12, 2007, and both by and among the City, Authority, JQH, UNP and the Developer.
5. Development Agreement No. 3 for the Development of Legacy Park dated as of October 23, 2007, by and among the City, UNP and the Developer.
6. Development Agreement No. 4 Providing Funding Commitments for a Rock Creek Road Overpass of Interstate 35 and Further Enhancing Development in the Norman University North Park Project dated as of September 9, 2008, by and among the City, the Authority, UNP, the Developer, JQH, the Norman Economic Development Coalition and the OU Foundation.
7. Development Agreement No. 5 Setting Forth Obligations related to Development of the Norman University North Park Project dated as of May 8, 2012, by and among the City, the Authority, UNP, the Developer and the Purchaser.

EXHIBIT B
FRONTAGE ROAD DESIGN

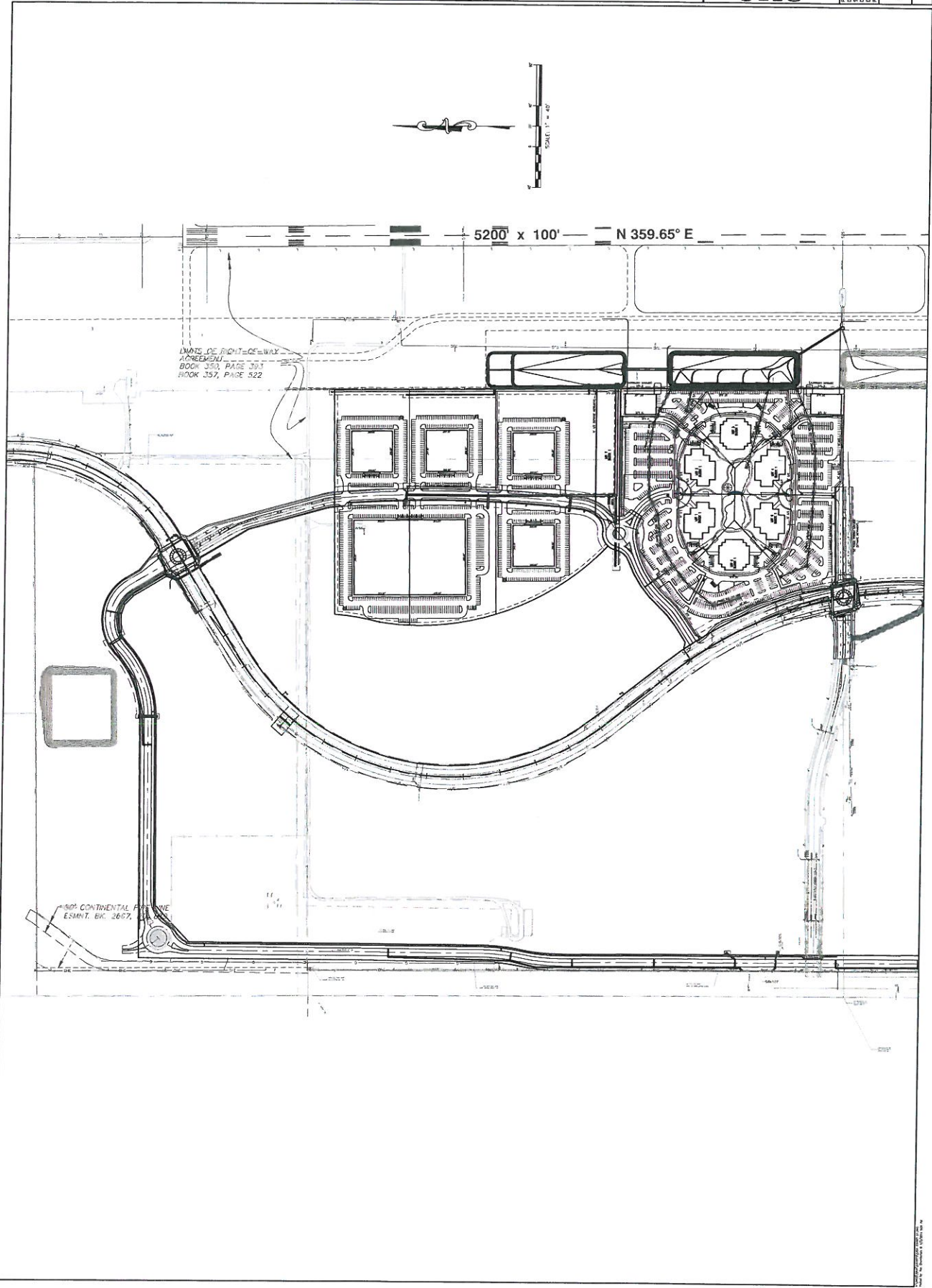


EXHIBIT C

UNP PROPERTY SUBJECT TO UNP STORM SEWER PAYBACK

