

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made as of October 22, 2013 by and between NINTH & NEW HAMPSHIRE, L.L.C., a Kansas limited liability company ("Borrower"), and COMMERCE BANK, a Missouri state banking corporation ("Lender").

### **PRELIMINARY STATEMENTS**

The City of Lawrence, Kansas (the "City") created the Downtown 2000 TIF District (the "District"), as set forth in that certain Agreement for Construction of Parking Garage and Concerning Downtown Development dated September 18, 2000 between the City and 9-10, L.C., a Kansas limited liability company ("9-10").

Borrower purchased certain property described on Exhibit A attached hereto ("Property"), within the District from 9-10 and incurred certain costs and expenses in connection with the construction of public infrastructure and other improvements to the Property (the "Project").

Pursuant to the terms of that certain Incentive Agreement dated as of April 4, 2012, between the City and the Borrower (the "Incentive Agreement"), the City agreed to reimburse the Borrower for such costs and expenses related to the Project.

Lender and Borrower are parties to a Amended and Restated Business Loan Agreement dated of even date (as amended, restated or modified from time to time, the "Loan Agreement") pursuant to which Lender made a term loan to Borrower in the original principal amount of \$8,300,000 (the "Loan"), which Loan is evidenced by that certain Amended and Restated Promissory Note dated of even date herewith, executed by Borrower and payable to Lender in the original principal amount of the Loan (as amended, restated, extended, renewed or modified from time to time, the "Note").

As a condition to the extension of the Loan, Lender requires that Borrower assign its rights under the Incentive Agreement and other documents and agreements relating thereto to Lender with respect to the Property and/or the Project to be exercised by Lender in the event of Borrower's default under the Loan Agreement or the other Loan Documents (as defined in the Loan Agreement) and that Borrower certify as to certain matters respecting the Incentive Agreement, all as further set forth herein.

Unless otherwise noted below, capitalized terms used in this Agreement but not defined in this Agreement shall have the meanings ascribed to them in the Loan Agreement.

### **AGREEMENT**

In consideration of the mutual covenants and provisions of this Agreement, the parties hereto agree as follows:

**Section 1. Collateral Assignment and Pledge.** As collateral security for the indebtedness and obligations of Borrower to Lender in connection with the Note, the Loan Agreement and the other Loan Documents (collectively, the "Obligations"), Borrower hereby grants to Lender a security interest in the following property together with all rights related thereto and with all additions thereto and substitutions therefor and the proceeds thereof:

- (i) All right, title and interest of Borrower in, to and under any and all redevelopment plans and all related tax increment financing agreements or other arrangements

relating to the Project or the Property, or any portion thereof, whether now existing or hereafter entered into, including, without limitation, all rights and benefits of Borrower in, under and to the Incentive Agreement (collectively, the "TIF Agreements");

(ii) All rights of Borrower to receive payments, as reimbursements for costs incurred in connection with the Project or the Property or otherwise, from the City (or any municipal subdivision thereof), or pursuant to the TIF Agreements or any amendments, extensions and replacements thereof;

(iii) All rights and benefits accruing to or received by Borrower pursuant to, in connection with, or as a result of having performed improvements relating to the Project or the Property pursuant to or in accordance with, the TIF Agreements, including without limitation, any rights to credits, offsets or reductions in any fees, impositions or assessments otherwise due or payable with respect to the Property or the development thereof;

(iv) All books, records (in whatever form maintained by or on behalf of the Borrower), copyrights, trade names, trademarks, service marks, goodwill, licenses, franchises, computer programs, manuals, and all intellectual property of any nature or description whatsoever relating in any manner to the Property or the TIF Agreements; and

(v) all products and proceeds of, and all additions and accessions to any or all of the foregoing now owned or hereafter acquired.

(the foregoing is collectively, the "Collateral").

Borrower shall obtain the consent of the City to the above referenced pledge in form and substance satisfactory to the Lender and in accordance with the terms of the Incentive Agreement. Borrower agrees that Borrower shall not agree to any amendment of the Incentive Agreement, and shall not further assign any of Borrower's rights thereunder, with respect to the Property, without Lender's prior written consent.

**Section 2. Indemnity.** Borrower agrees to indemnify and hold Lender and its nominees, permitted successors, assigns, members, parent company (if any), officers, directors, partners, managers, agents and employees, harmless of and from any and all liabilities, claims, causes of action, penalties, demands and expenses, of any kind or nature whatsoever to the extent arising out of, resulting from, relating to or incident to the Borrower obligations or performance under the TIF Agreements prior to and including the date of Lender's exercise of its rights under this Agreement or the material incorrectness of any representation or warranty of Borrower contained in this Agreement, and all expenses related thereto, including, without limitation, court costs and reasonable attorneys' fees.

**Section 3. Representations, Warranties and Covenants.** Borrower represents, warrants and covenants to and with Lender as follows:

(a) Exhibit B attached hereto contains a true, correct and complete copy of the Incentive Agreement and the City ordinance approving the Incentive Agreement. The documents comprising Exhibit A evidence all agreements between the City and Borrower and the only transaction between Borrower and City with respect to the subject matter of the Incentive Agreement insofar as it relates to the Property and there are no oral agreements between such parties with respect to the subject matter of the Incentive Agreement.

(b) Borrower has, and to the best of Borrower's actual knowledge the City has taken all necessary corporate, organizational or governmental action to authorize the execution,

delivery and performance of the Incentive Agreement, and the Incentive Agreement constitutes the legal, valid and binding obligation of Borrower thereto, enforceable against Borrower in accordance with their terms.

(c) The Incentive Agreement is in full force and effect as of the date hereof. Neither the Borrower nor, to the best of Borrower's knowledge, the City is in default under the Incentive Agreement and no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, will constitute a default by Borrower or the City under the Incentive Agreement. The Borrower has, and to the best of Borrower's actual knowledge, the City has, performed all of their respective obligations under the Incentive Agreement which under the terms of the Incentive Agreement are to have been performed by the date hereof. The Borrower shall, and shall use reasonable efforts to ensure that the City shall, perform all of their respective obligations which under the terms of the Incentive Agreement are to be performed after the date hereof. The Borrower has, and to the best of Borrower's actual knowledge, the City has, no claims, actions or causes of action against any of the other party to the Incentive Agreement for failure of such party to fully and completely perform and satisfy its duties and obligations under the Incentive Agreement. The Borrower has, and to the best of Borrower's actual knowledge, the City has, no defenses, counterclaims or setoffs against enforcement of the Incentive Agreement or any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions of the Incentive Agreement to be kept, observed, performed, satisfied or complied with by the other party thereto.

(d) Borrower acknowledges that Lender is relying on this Agreement in making the Loan to Borrower.

(e) The execution and delivery of this Agreement will result in the valid and legally binding obligation of Borrower enforceable against Borrower in accordance with the terms and provisions hereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(f) Borrower is the owner of the Collateral free from any lien, security interest, encumbrance and any other claim or demand and the Collateral is subject to no rights of others, including without limitation any sale agreements, liens or other encumbrances. The Collateral and the rights of the Lender with respect to the Collateral are not subject to any setoff, claims, with Borrower or other defenses. There are no financing statements, security agreements, chattel mortgages, or other documents filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in any of the Collateral. Borrower will warrant and defend at Borrower's cost Borrower's right, title and interest in and to the Collateral against the claim or claims of any and all others it being understood by Borrower that the Lender is specifically relying upon this warranty as material inducement in permitting Borrower to incur the Obligations. Borrower will not permit any lien, security interest or encumbrance on the Collateral (other than the security interest in favor of Lender).

(g) Borrower will promptly deliver to Lender copies of all written notices, and promptly give Lender written notice of any other notices received by Borrower that relate to the TIF Agreements.

**Section 4. Default; Remedies.**

(a) Any default or failure by Borrower to observe or perform any of the covenants, terms, or provisions contained in this Agreement and any material breach of a representation or warranty by Borrower shall be an "Event of Default" under this Agreement and under the Loan Agreement. Any Event of Default as defined in the Loan Agreement shall constitute an Event of Default under this Agreement.

(b) Upon the happening of any one or more of Events of Default and at any time thereafter, Lender may, at Lender's option, exercise any one or more of the following rights and remedies: (i) declare all unmatured Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand; (ii) direct the City to deliver to Lender all proceeds of the TIF Agreements, as applicable, relating to the Property or the Project; (iii) exercise and enforce any or all rights and remedies available upon default to a secured party under the Uniform Commercial Code in effect in Kansas, including, but not limited to, the right to take possession of any Collateral, proceeding without judicial process or by judicial process (without a prior hearing or notice thereof, which Borrower hereby expressly waives), and the right to sell, lease or otherwise dispose of any or all of the Collateral, and in connection therewith, Lender may require Borrower to make the Collateral available to Lender at a place to be designated by Lender which is reasonably convenient to both parties, and if notice to Borrower of any intended disposition of Collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the date of intended disposition or other action; and (iv) exercise or enforce any or all other rights or remedies available to Lender by law or agreement against the Collateral, against Borrower or against any other person or property. The proceeds of any sales shall be applied in the following order: first, to pay the expenses of the sale including reasonable compensation to any attorney and to any agent employed in reference thereto; next, to any accrued interest on the Obligations and then to the principal thereof, whether or not same be then due or accrued; any surplus remaining to be paid to Borrower. If the proceeds of any such sale are insufficient to pay all of the Obligations with interest and expenses as aforesaid, Borrower agrees to pay the balance thereof to Lender on demand. Lender shall have the right at any sale, public or private, to purchase the whole or any of the Collateral so sold free from any right or equity of redemption in Borrower, such right of equity of redemption being hereby expressly waived by Borrower. At any such sale any officer, employee, or attorney of Lender may act as auctioneer. Borrower further agrees that any deposit account with Lender may be applied or set off against any one or more or all of the Obligations at any time at the option of Lender, whether or not same be then due or accrued and such right of application or set off by the Lender is applicable to any and all participants or purchasers of any or all indebtedness of the Borrower which may have any deposit account of the Borrower.

**Section 5. Direct Payment to Lender.** The City shall, if and as directed by Lender in writing and without further consent of Borrower, comply with all instructions originated by Lender with respect to the TIF Agreements and the payment of amounts Borrower is entitled to receive under the TIF Agreements with respect to the Property and disregard any instructions from Borrower with respect to the TIF Agreements. Any such direct payments by the City to Lender shall discharge the City's obligations under the TIF Agreements, to the extent such payments are made, and the City shall have no further liability to Borrower for the amount of such sums so paid directly to Lender.

**Section 6. Title to Collateral.** Lender shall have the right at any time, after an Event of Default hereunder, at its option, to transfer or cause to be transferred to or registered in the name of Lender or its nominee or nominees any and all stocks, bonds, and other securities which may at any time

be pledged hereunder, and thereafter to exercise full dominion thereover and any and all powers with respect thereto, including the right to vote for any purpose, with the same force and effect as the absolute owner thereof, all without notice or liability to Borrower except to account for property actually received by Lender; provided, if any of the Collateral consists of negotiable instruments and/or chooses in action and/or promises to pay money, secured or unsecured, Lender shall have full power in its discretion, but shall be under no obligation so to do, at any time: (a) in its name or in the name of the Borrower or anyone having an interest therein to demand, sue for, collect, and/or receive money, securities, or other property at any time due, payable, or receivable on account of or in exchange for any such part of the Collateral, or make any compromise or settlement deemed desirable with respect thereto; (b) to renew or extend the time of payment thereof or otherwise modify the terms thereof; or (c) to foreclose the lien of any security instrument relating thereto and become the purchaser of the property constituting the security without thereby incurring responsibility to or otherwise affecting any of the Obligations.

**Section 7. No Assumption by Lender.** Notwithstanding the assignment herein made, and notwithstanding anything herein contained seemingly to the contrary:

(a) Borrower shall remain liable under the TIF Agreements to perform all of Borrower's obligations thereunder in accordance with and pursuant to the terms and provisions thereof;

(b) while any Event of Default exists, any obligation of Borrower under the TIF Agreements or with respect to the Property or the Project may be performed by Lender or its nominee or other assignee (but Lender shall have no obligation to do so), and no such performance shall release Borrower from such obligations (or from its other obligations under the TIF Agreements) nor result in any assumption of said obligation (or of such other obligations) by Lender; and

(c) Lender shall have no obligation or liability under the TIF Agreements by reason of or arising out of this Agreement or the assignment herein made, nor shall Lender be required or obligated in any manner to perform or fulfill any obligations of Borrower under or pursuant to the TIF Agreements.

**Section 8. Miscellaneous.**

(a) Any forbearance or failure or delay by Lender in exercising any right, power, or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power, or remedy hereunder shall not preclude the further exercise thereof; and every right, power, and remedy of Lender shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Lender.

(b) From time to time, Borrower will execute and deliver to Lender such additional documents and will provide such additional information as Lender may reasonably require to carry out the terms of this Agreement and be informed of Borrower's status and affairs.

(c) The provisions of this Agreement are severable, and if any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is invalid, illegal, or unenforceable, shall not be affected or impaired thereby and each term, covenant, and condition of this Agreement shall be valid and enforceable to the fullest

extent permitted by law. In addition, if any provision hereof is found to be partially enforceable, then it shall be enforced to that extent.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, employees, agents, officers, successors and permitted assigns and any entity into which any party may be incorporated, liquidated, merged, or consolidated. Borrower may not sell, assign or transfer any interest in this Agreement, or any portion thereof, including without limitation, Borrower's rights, title, interests, remedies, powers and duties hereunder or thereunder. Borrower hereby consents to Lender's participation, sale, assignment, transfer or other disposition, at any time or times hereafter, of this Agreement, or of any portion hereof or thereof, including, without limitation, Lender's rights, title, interests, remedies, powers and duties hereunder.

(e) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by Lender shall be deemed to be originals thereof.

(f) **WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE RELATIONSHIPS AMONG LENDER AND BORROWER.**

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

**BORROWER:**

**NINTH & NEW HAMPSHIRE, L.L.C.**

a Kansas limited liability company

By: 901 NH Partners LLC, its managing member

By: \_\_\_\_\_  
Douglas J. Compton, Manager

Address for Notices:  
601 North Iowa  
Lawrence, Kansas 66044  
Attn: Douglas J. Compton

**LENDER:**

COMMERCE BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:  
1500 Wakarusa Drive  
Lawrence, Kansas 66047  
Attn: Mark Heider

**CONSENT OF THE CITY OF LAWRENCE, KANSAS**

By signing below, the City of Lawrence, Kansas hereby consents to Borrower's collateral assignment of the rights provided in this Agreement to Lender and agrees to the provisions of Section 5(a) of this Agreement.

CITY OF LAWRENCE, KANSAS

By: \_\_\_\_\_  
Name: Michael Dever  
Title: Mayor

Address for Notices:

City Manager  
City of Lawrence  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044



**EXHIBIT A**

**LEGAL DESCRIPTION THE PROPERTY**

Lot 1 in Downtown 2000 Addition, in the City of Lawrence, Douglas County Kansas, LESS that part Deeded to the City of Lawrence, Kansas, a municipal corporation, in Book 688, Page 1393.

**EXHIBIT B**  
**INCENTIVE AGREEMENT**

[See attachment.]