AMENDMENT TO

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

DATED AS OF JULY 21, 2015

BETWEEN THE

CITY OF WICHITA, KANSAS,

AND

RIVER VISTA, L.L.C.

RELATING TO THE WEST BANK APARTMENTS PROJECT PLAN

FOR THE

EAST BANK REDEVELOPMENT DISTRICT

AND

RIVER DISTRICT STAR BOND PROJECT PLAN
LIST OF EXHIBITS

Exhibit O    Form of Developer Guaranty
AMENDMENT

TO

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the “Amendment”), is dated as of July 21, 2015 by and between the CITY OF WICHITA, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and RIVER VISTA, L.L.C., a Kansas limited liability company (the “Developer”); collectively referred to as the “Parties” and each a “Party”).

WHEREAS, the Parties have heretofore authorized, executed and delivered a certain Amended and Restated Development Agreement, dated as of January 9, 2015, between the City and River Vista, L.L.C., (the “Agreement”); and

WHEREAS, the Parties desire to amend the Agreement as hereinafter set forth.

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

Section 1. Amendment to Section 1.01. The following definitions contained in Section 1.01 of the Agreement are hereby amended to read as follows:

“Guarantors” means George E. Laham, II, David E. Wells, and David C. Burk.

“Phase II” shall mean the construction of a commercial, retail, office or multi-family residential building or buildings on the Phase II Lot that are in the aggregate approximately 20,000 sf or larger.

Section 2. Amendment to Exhibit O. Exhibit O to the Agreement (the “Original Guaranty”) is hereby amended to be in the form attached as Exhibit O hereto. The Guaranty Agreement attached as Exhibit O to this Amendment shall replace in its entirety the Original Guaranty and, upon full execution of Exhibit O to this Amendment, the individuals that executed the Original Guaranty that did not execute Exhibit O to this Amendment are hereby released from the obligations set forth in the Original Guaranty.

Section 3. Ratification. The rest and remainder of the Agreement not amended herein is hereby ratified and confirmed.

[Signatures on Following Pages]
IN WITNESS WHEREOF, the City and the Developer have duly executed this Amendment pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

__________________________________________
Jeff Longwell, Mayor

ATTEST:

__________________________________________
Karen Sublett, City Clerk

APPROVED AS TO FORM:

__________________________________________
Jennifer Magaña, Director of Law
and City Attorney

DEVELOPER:

RIVER VISTA, L.L.C.,
a Kansas limited liability company

By: ____________________________
Amy J. Liebau, President
Exhibit O
Form of Developer Guaranty

[See Attached]
GUARANTY AGREEMENT

BETWEEN

RIVER VISTA, L.L.C.,

GEORGE E. LAHAM, II,

DAVID E. WELLS,

AND

DAVID C. BURK

AS GUARANTORS

AND

THE CITY OF WICHITA, KANSAS

DATED AS OF JULY 21, 2015
GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT dated as of July 21, 2015 (the “Guaranty Agreement”), by and between RIVER VISTA, L.L.C., a Kansas limited liability company, GEORGE E. LAHAM, II, DAVID E. WELLS and DAVID C. BURK (collectively and individually, the “Guarantor”) and the City of Wichita (the “City”).

WITNESSETH:

WHEREAS, the City, an incorporated city of the first class, duly organized and existing under the laws of the State of Kansas (the “State”), intends to issue general obligation tax increment bonds in a principal amount not to exceed $2,550,000 (the “TIF Bonds”) and its full faith and credit community improvements district bonds in a principal amount of not to exceed $5,590,650 (the “CID Bonds,” which together with the TIF Bonds are referred to as the “Bonds”) to assist River Vista, L.L.C. in development and financing of a project in the City pursuant to an Amended and Restated Development Agreement dated as of January 9, 2015 between River Vista, L.L.C. and the City, as amended (the “Development Agreement”); and

WHEREAS, as a condition of issuing the Bonds and as required by the Development Agreement, on the basis hereinabove summarized, the City has required the Guarantor and the Guarantor has agreed to furnish a financial guarantee for the full and prompt payment of all principal and interest payments as scheduled on the Bonds, when and as the same shall become due and in accordance with the terms and conditions of the Bonds.

NOW, THEREFORE, in consideration of the foregoing, the Guarantor does hereby covenant and agree with the City as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1. Representations and Warranties of the Guarantor. Each Guarantor represents and warrants to the City as follows:

(a) Financial Benefit. The execution of this Guaranty and the assumption by each Guarantor of its obligations hereunder will result in a direct financial benefit to it.

(b) No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of each Guarantor, threatened against the Guarantor which would in any manner challenge or adversely affect powers of each Guarantor to enter into and carry out the transactions described in or contemplated by this Guaranty or the execution, delivery, validity or performance by each Guarantor of the terms and provisions of this Guaranty.

Section 1.2. Survival of Representations. All representations of each Guarantor contained in this Guaranty or in any certificate or other instrument delivered by each Guarantor pursuant to this Guaranty, shall survive the execution and delivery thereof.
ARTICLE II
THE GUARANTY

Section 2.1. Guaranty. Each Guarantor, jointly and severally, unconditionally guarantees to the City the following:

A. The full and prompt payment of all principal and interest payments as scheduled for the TIF Bonds and CID Bonds, when and as the same shall become due and in accordance with the terms and conditions of the Bonds; provided, however, that Guarantors’ liability for such payments shall be limited with respect to the TIF Bonds to the amount by which such payments exceed the tax increment (as defined in the TIF Act) paid to Sedgwick County and distributed to the City for the Lot (as those terms are defined in the Development Agreement) and are available to utilized for payment of the TIF Bonds and CID Bonds in accordance with Section 4.10 of the Development Agreement during the term of the Development Agreement.

B. The full and prompt payment of the costs and expenses of any proceedings relating to the enforcement of any provision of this Guaranty and the reasonable fees, expenses, disbursements and advances of the City, its agents and counsel; and

Section 2.2. Payments on Guaranty.

A. All payments by each Guarantor shall be paid in lawful money of the United States of America. Any default in the provisions hereof shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action rises.

B. It is understood that extensions of time of payment or modifications or renewals of any of the obligations of any Guarantor hereunder shall not in any way impair the liability of the undersigned to City and that the undersigned will keep informed as to all matters pertaining to this Guaranty without notice from City.

C. When any of the obligations guaranteed in this Guaranty shall be and remain due and unperformed or unpaid, the undersigned will, upon demand, cause the performance or payment of such obligations.

D. Before proceeding hereunder against the undersigned, resort need not be made by City to any other security for any or all of the guaranteed obligations, nor shall the City be required to exhaust any remedy against any other endorser, surety or guarantor of the obligations.

E. Notice of the making, renewing or extending time of payment of any of the guaranteed obligations, and of demand, protest, and notice of nonpayment thereof, and notice of acceptance hereof, are expressly waived. No substitution, release or death of any other party liable for the payment of any of such obligations shall affect the liability of the undersigned to City. A waiver by the City of any right or remedy on any one or more occasions shall not be construed as a bar to or a waiver of any such right or remedy on future occasions.

F. The undersigned agree that, if at any time all or any part of any payment previously applied by City on any of the guaranteed obligations must be returned by the City for any reason, whether by court order, administrative order, or settlement, the undersigned shall remain liable for the full amount
returned as if such amount had never been received by City, notwithstanding any termination of this Guaranty or the cancellation of any agreement evidencing the guaranteed obligations.

G. River Vista, L.L.C. agrees to, no more than once per twelve (12) month period, allow the designated City Representative to review, but not retain any copies of, its financial statements at a mutually agreeable time and place but only after said City Representative has entered into a binding Non-Disclosure Agreement. The terms of the Non-Disclosure Agreement shall allow an exception from its provisions for discussion with City Management and Legal staff, and for further disclosure as needed for enforcement or collection due to material default, should the anticipated review disclose information that would call for the same. If the City desires to review the financial statements of any of the other Guarantors, it shall, at its sole cost and expense, contract with Springsted Incorporated to review such financial information and provide summary information to the City. The City acknowledges and agrees that the Guarantors will only provide financial information to Springsted for review upon execution of a mutually agreeable Non-Disclosure Agreement.

H. Each of the undersigned has unconditionally delivered this Guaranty to City and failure to sign this or any other guaranty by any other person shall not discharge the liability of the signer of this Guaranty.

I. This Guaranty shall be governed by, and construed in accordance with, the laws of Kansas, shall inure to the benefit of City, its successors and assigns, and shall be binding upon the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned.

J. Each Guarantor waives diligence, presentment, demand of payment, and filing of claims with a court in the event of receivership or bankruptcy of any Guarantor, protest or notice and all demands whatsoever.

[THE BALANCE OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, Each Guarantor has executed this Guaranty as of the date first above written.

RIVER VISTA, L.L.C.,
a Kansas limited liability company

By: __________________________________________
    Amy J. Liebau, President

Name:  George E. Laham, II

Name:  David E. Wells

Name:  David C. Burk
ACCEPTANCE OF CITY

This Guaranty Agreement and the obligations undertaken in it by the Guarantor are hereby accepted by the City as of the date first above written.

THE CITY OF WICHITA, KANSAS

By: ____________________________
Name: Jeff Longwell
Title: Mayor