CITY OF COFFEYVILLE
BOARD OF COMMISSIONERS AGENDA ITEM

MEETING DATE	12/22/2015	
RESOLUTION OR ORDINANCE NUMBER	G-16-01	
AGENDA TITLE	Neil Hotel CID (Holiday Inn Express)	
REQUESTING DEPARTMENT	Economic Development/Administration	
PRESENTER	Trisha Purdon, Assistant to the City Manager & Sarah Steel – Gilmore and Bell, P.C.	
FISCAL INFORMATION	Cost as recommended:	N/A
	Budget Line Item:	
	Balance Available	
	New Appropriation Required:	[ ] Yes [X] No
PURPOSE	To enable the Holiday Inn Express property to be established as a Community Improvement District in order to aid in financing the development and operating costs of the new hotel project. This allows the property to add up to a 2% sales tax to their customer's bill, which will then be returned to the business to cover the development and operating costs for the hotel. This is a State of Kansas Incentive program that is especially useful in new retail development in rural communities.	

BACKGROUND	In 2009, Governor Kathleen Sebelius approved and enacted H.B. 2324, known as the Community Improvement District Act (CID Act). The CID Act permits the establishment of Community Improvement Districts which create new revenue sources to finance real estate development. This Act enables the City Commission to form a CID to finance the cost of a broad range of development including operating expenses that are incurred post-construction. The CID is unique in that it does not affect the amount of sales or ad valorem property tax that the City collects. Although this program can be set up as an up-front incentive using special assessments, CID Bond proceeds, or a full faith and credit GO bond, the City and the company has agreed that a pay-as-you-go CID sales tax is the most fair and easy method to use to disburse the CID benefits to the company. The "pay-as-you-go" financing option means that the developer advances the costs of the project up-front, and the CID fund reimburses the developer over the life of the CID. This reduces administration costs and generally results in more gross revenue over time than CID bond financing. If the CID revenues pay all eligible project costs, the City can then spend any remaining funds as though they were local sales tax receipts. The CID district can charge up to a 2% additional sales tax that is passed on to customers shopping in that district (in this case, only Holiday Inn). This sales tax will go into effect for 22 years, but may be shortened if the project costs are paid in full. Their customers will pay this 2% fee on their bill. Several other communities have required that this additional fee be posted at the entrance to their hotel so that consumers are not surprised when they receive their bill with this additional fee.
SPECIAL NOTES	This petition was initiated by Mr. Larry Patel, CEO of Neil Hotel Group.

ANALYSIS	This is a program that is regularly used for hotel projects since 2009 when the CID Act was established by the State of Kansas. This is especially key in rural communities, where the developer assumes more risk for financing a new development than in more urban communities. This request was presented to the City from Gilmore and Bell and the owner of Neil Hotels as something that would help provide an extra level of security for their IRB bond that the Commission approved in October, 2015. There are minimal administration costs associated with a CID District, which the City would be reimbursed for through at 5% administration fee of any sales taxes generated on the 2% CID sales tax revenues. The total project costs of the Holiday Inn project are $6,200,000. If the CID generates more than this amount in the 22 year period, the funds could then be used as sales tax revenue that the City could use however it saw fit. As there is potential for a business, such as a restaurant, to locate on the corner of this parcel, Staff inquired to see if this future business could opt-out of the CID if requested. Gilmore and Bell stated that a business could request removal from the CID district at the time the parcel is subdivided from the current parcel included in the CID district. This incentive would be available to any new retail business that might open in Coffeyville. In comparison to other hotel incentives that have been offered, this project was required to pay the full real estate value for the land, whereas, Best Western next door received the land from the city at no cost as an incentive for development. Just as in the case of Best Western and Sleep Inn, they have received a property tax abatement, but in this case, there is a shorter abatement period than the two current hotels were offered. As this hotel will also likely have a higher room rate than these two hotels, staff feels that the competition will as fair as any new business that could come to town would experience.
PUBLIC INFORMATION PROCESS	Published in the Coffeyville Journal on: 11/28/15 & 12/05/15 Public Hearing on December 22, 2015 First Reading of Ordinance: December 22, 2015 Second Reading of Ordinance: January 12, 2016

BOARD OR COMMISSION RECOMMENDATION	
STAFF RECOMMENDATION	It is staff's recommendation that the City Commission approve the petition to establish the single property as a Community Improvement District to aid in financing the costs of development and operation of the new Holiday Inn Express in Coffeyville. With the stipulation that the business post a notice regarding the 2% CID Sales Tax on the entrance to the door of the hotel, and that 5% of the CID sales taxes generated be paid to the City of Coffeyville to cover the administrative costs of the CID.
REFERENCE DOCUMENTS ATTACHED	CID Ordinance ID Development Agreement

(Published in the ***Coffeyville Journal*** on January 16, 2016)

ORDINANCE NO. S-16-01

AN ORDINANCE CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF COFFEYVILLE, KANSAS; AUTHORIZING CERTAIN PROJECTS THEREIN; APPROVING THE ESTIMATED COSTS OF SUCH PROJECTS; CONTAINING THE LEGAL DESCRIPTION AND MAP OF THE BOUNDARIES OF THE DISTRICT; LEVYING A COMMUNITY IMPROVEMENT DISTRICT SALES TAX; AND APPROVING THE METHOD OF FINANCING THE PROJECTS.

WHEREAS, the governing body of the City of Coffeyville, Kansas (the "City"), has heretofore received a Petition pursuant to K.S.A. 12-6a26 *et seq.* (the "Act") and adopted Resolution No. _____ of the City, containing the time and place of a public hearing on the advisability of creating a community improvement district (the "District"), the general nature of proposed project within the District (the "Project"), the estimated costs of the Project, the proposed method of financing the Project, the proposed amount a sales tax within the District, the proposed method of assessment, if any, and a map and legal description of the proposed District; and

WHEREAS, Resolution No. R-15-146 was published twice in the ***Coffeyville Journal***, the official City newspaper, on November 28, 2015 and December 5, 2015; and

WHEREAS, the governing body has heretofore on this date conducted a public hearing on advisability of creating the District; and

WHEREAS, the governing body hereby finds and determines it to be advisable to adopt this Ordinance to create the District, authorize the Project therein, approve the estimated costs of such improvement Project, contain the legal description and map of the boundaries of the District, levy a community improvement district sales tax and approve the method of financing the improvement Project, all in accordance with the provisions of the Act.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COFFEYVILLE, KANSAS:

SECTION 1. Creation of Community Improvement District; Legal Description and Map.

The governing body hereby finds and determines that it is advisable to create, in accordance with the provisions of the Act, the District. The legal description of the District is as follows:

A tract of land located in a portion of Government Lot 10, of Fractional Section 31, Township 34 South, Range 17 East of the 6th Principal Meridian, Montgomery County, Kansas, said tract of land being more particularly described as follows:

Commencing at the Southwest corner of said Lot 10; thence South 88 degrees 32 minutes 02 seconds East, along the South line of said Lot 10, a distance of 632.72 feet to the East Right of Way line of Highway 166-169; thence North 28 degrees 16 minutes 47 seconds East along said East Right of Way line a distance of 44.82 feet to the POINT OF BEGINNING, said point being located on the North Right of Way line of East Eighth Street; thence continuing North 28 degrees 16 minutes 47 seconds East along said East Right of Way line a distance of 393.51 feet to the Southwest corner of a tract of land

conveyed by General Warranty Deed to the City of Coffeyville as recorded in Book 541, Page 566 in the Montgomery County Register of Deeds Office; thence South 61 degrees 47 Minutes 34 seconds East along the South lien of said City of Coffeyville tract extended a distance of 387.05 feet; thence South 01 degrees 27 minutes 58 seconds West a distance of 177.04 feet to the North Right of Way line of East Eighth Street; thence North 88 degrees 32 minutes 02 seconds West along said North Right of Way line a distance of 523.16 feet to the POINT OF BEGINNING, said tract of land to convey a 20-foot wide utility easement along the North and East lines of the above description. Subject to any part thereof that may be located in highway or street Right of Way.

A map of the property contained in the District is set forth on ***Schedule I*** attached hereto and incorporated by reference herein.

SECTION 2. **Authorization of Community Improvement District Project; Estimated Costs**.

The governing body hereby authorizes the improvement Project within the District, as more fully described below:

(A) Within the District, construction of the following:

Construction of a hotel facility, including 78 rooms, and acquiring and installing furniture, fixtures and equipment in the buildings and structures (the "Hotel Facility").

(B) Within the District, there may be construction of any of the following to serve the Hotel Facility:

(1) sidewalks, streets, roads, interchanges, highway access roads, intersections, parking lots, traffic signs and signals, utilities, pedestrian amenities, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;

(2) streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;

(3) parks, lawns, trees and other landscape;

(4) paintings, murals, display cases, sculptures, fountains and other cultural amenities;

(C) Within the District, and in connection with the operation of the Hotel Facility, to operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;

(D) Within the District, and in connection with the operation of the Hotel Facility, to provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons;

(E) Within the District, and in connection with the operation of the Hotel Facility, to provide or contract for cleaning, maintenance and other services to public or private property;

(F) Within the District, and in connection with the operation of the Hotel Facility, to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the district, promotion of such activity and special events and furnishing music in any public place;

(G) Within the District, and in connection with the operation of the Hotel Facility, to support business activity and economic development, including, but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business;

(H) Within the District, and in connection with the operation of the Hotel Facility, to provide or support training programs for employees of businesses; and

(I) Within the District, and in connection with the operation of the Hotel Facility, to contract for or conduct economic impact, planning, marketing or other studies.

The *estimated* costs of the Project are $6,200,000.

SECTION 3. **Method of Financing**.

(a) The costs of the proposed Project proposed to be financed by "Pay-as-you-go financing," as defined in K.S.A. 12-6a27, and paid from the fund of the City identified in K.S.A. 12-6a34. It is estimated that the City will pay to the owner of the property in the District, or its successor(s) approximately $1,000,000 from the fund created by the City for deposits of the Sales Tax (as defined herein), which amount shall not be limited in amount by this Ordinance authorizing the Project.

(b) There will be **no** special assessments levied on property within the boundaries of the District.

SECTION 4. **Levy of Sales Tax.** In order to provide funds to finance the costs of the Project, the levy, in accordance the provisions of the Act, of a community improvement district sales tax within the District, in an amount of 2% on the selling of tangible personal property at retail or rendering or furnishing services within the District (the "Sales Tax"), is authorized and directed. The collection of the Sales Tax shall commence on January 1, 2017 and shall expire 22 years from such commencement date. The Sales Tax shall be administered, collected and subject to the provisions of K.S.A. 12-187 *et seq.* The City Clerk, upon adoption of this Ordinance, shall provide a certified copy of the same to the State Director of Taxation pursuant to K.S.A. 12-189.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the City and publication in the official City newspaper.

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PASSED by the governing body of the City of Coffeyville, Kansas, on January 12, 2016, and **SIGNED** by the Mayor.

(Seal)

_____
Christopher V. Williams, Mayor

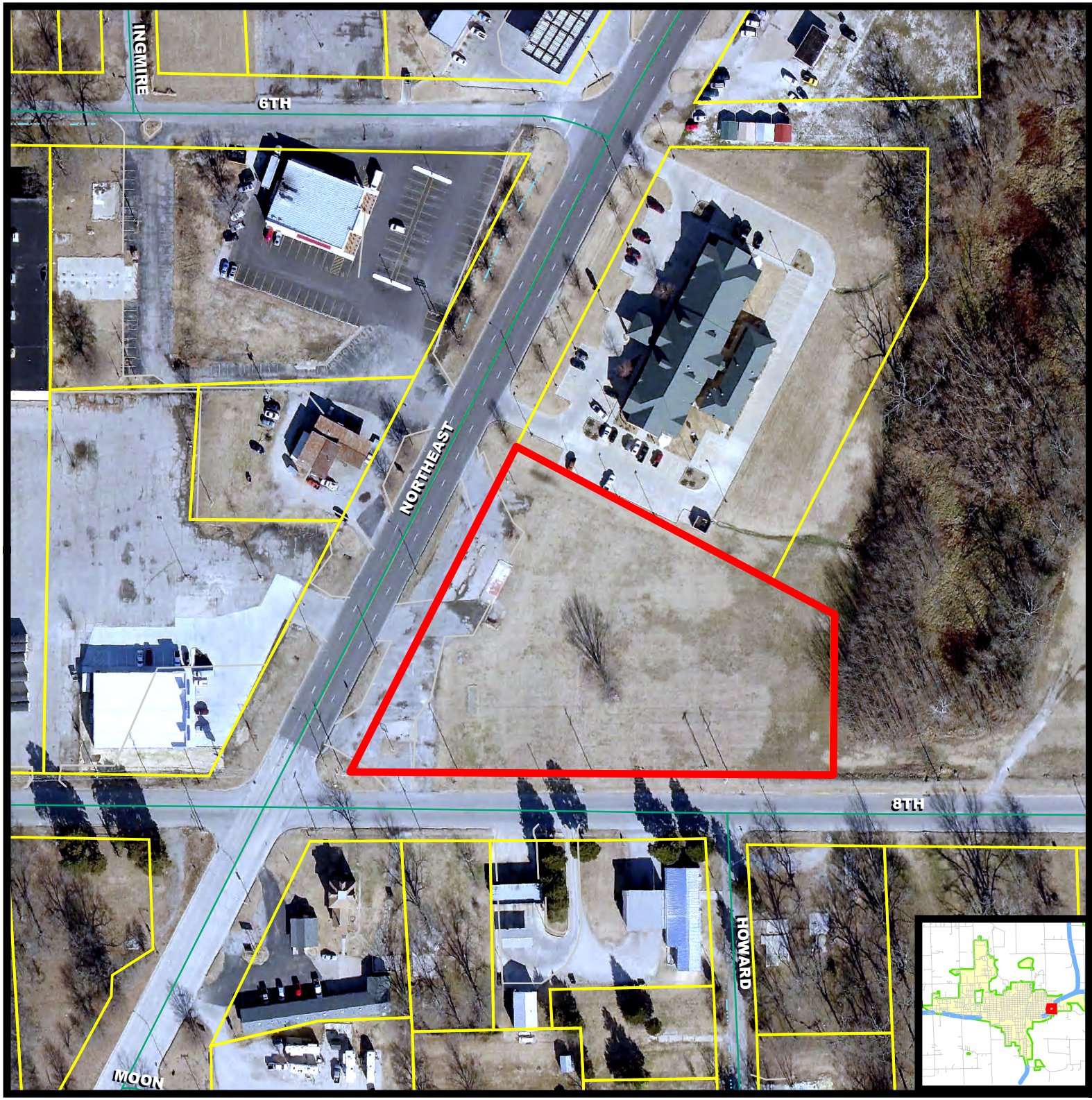
ATTEST:

_____
Cindy Price, City Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of Ordinance No. S-16-01 of the City of Coffeyville, Kansas adopted by the governing body on January 12, 2016, as the same appears of record in my office, and that it was published in the ***Coffeyville Journal*** on January 20, 2016.

DATED: January 22, 2016.



Coffeyville
KANSAS

Engineering Department
102 W 7th
COFFEYVILLE, KS 67337
VOICE: 620-252-6000
FAX: 620-252-6175
www.coffeyville.com

GIS System By: Midland GIS

Holiday Inn Site CID

1 inch = 145 feet

DEVELOPMENT AGREEMENT

BETWEEN

CITY OF COFFEYVILLE, KANSAS

AND

NIEL HOTEL, LLC

FOR IMPLEMENTATION OF THE

COMMUNITY IMPROVEMENT DISTRICT

DATED AS OF

JANUARY 12, 2016

DEVELOPMENT AGREEMENT

CITY OF COFFEYVILLE, KANSAS
COMMUNITY IMPROVEMENT DISTRICT

This Development Agreement (the "Agreement") for implementation of the Community Improvement District (the "District") established by Ordinance No. S-16-_____ of the **CITY OF COFFEYVILLE, KANSAS**, a municipal corporation (the "City"), is entered into by and between the City, **NIEL HOTEL, LLC,** a Kansas limited liability company (the "Owner") (collectively referred to as the "Parties"), is dated as of the Dated Date and effective as of the Effective Date. In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Section 1. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Act. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

"Act" means the Constitution and statutes of the State including K.S.A. 12-6a26 *et seq*., as amended and supplemented from time to time.

"CID Sales Tax" means the two percent (2%) special Community Improvement District Sales Tax levied within the District and collected pursuant to K.S.A. 12-6a31, as amended.

"CID Sales Tax Fund" means the Community Improvement District Sales Tax Fund created pursuant to ***Section 5*** hereof.

"City" means City of Coffeyville, Kansas.

"City Administrative Fee" means an amount equal to five percent (5.0%) of the total CID Sales Tax as collected.

"City Attorney" means the duly appointed City Attorney, or in the City Attorney's absence, the duly appointed Acting City Attorney of the City.

"Clerk" means the duly appointed Clerk or, in the Clerk's absence, the duly appointed Assistant Clerk or Acting Clerk of the City.

"Dated Date" means the date the Governing Body takes action on adopting the agreement

"Department of Revenue" means the Department of Revenue of the State.

"Owner" means Niel Hotel, LLC, a Kansas limited liability company, and its successors and assigns.

"District" means the Community Improvement District established by the City pursuant to Ordinance No. S-16-_____ which contains within its boundaries the real property legally described in ***Exhibit A*** attached hereto and the boundaries of which are contained in a map of the District attached as ***Exhibit B*** attached hereto.

"Effective Date" means the last date on which all of the Parties have executed this Agreement, as reflected on the signature page(s) hereof.

"Eligible Cost" means all Costs of the Project eligible to be paid or reimbursed pursuant to the Act.

"Facility" means the Holiday Inn Express all located in the City, within the legal description that is attached as ***Exhibit A***.

"Governing Body" means the City Commission of the City.

"Mayor" means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected President of the Council or Acting Mayor of the City.

"Notice Address" means with respect to the following entities:

(a) To the City at:

City Hall
11 East 2nd Street
Coffeyville, Kansas 67337

(b) To the Owner at:

Niel Hotel, LLC
115 Blue Jay Dr., Suite 101
Liberty, Missouri 64068

"Notice Representative" means:

(a) With respect to the City, the City Clerk with a copy to the City Attorney.

(b) With respect to the Owner, Larry Patel.

"Ordinance" means Ordinance No. S-16-_____ adopted by the Governing Body of the City authorizing the creation of the District, as amended from time to time.

"Owner" means Niel Hotel, LLC, a Kansas limited liability company, and its successors and assigns.

"Parties" means, collectively, the City and the Owner.

"Petition" means the Petition for the Creation of a Community Improvement District, signed by the Owner and filed with the Clerk on November 23, 2015.

"Project" means the improvements and enhancements to the Facility generally described on ***Exhibit C*** hereto, as may be modified from time to time by the Parties.

"Project Costs" means the costs and expenses of the Project described in K.S.A. 12-6a27, as amended.

"Reimbursable Project Costs Cap" means $6,200,000 or the amount financed by Industrial Revenue Bonds for the project.

"State" means the state of Kansas.

Section 2. District Formation and Purpose. The Owner filed the Petition with the Clerk requesting the creation of the District. The City certified therein that the Owner is the owner of all of the land area proposed to be within the boundaries of the District. The Governing Body, in accordance with the provisions of the Act, adopted a resolution calling and providing for notice of a public hearing on the advisability of creating the District. The Clerk provided for publication of such resolution and dissemination of notice of such public hearing in accordance with provisions of the Act. At the conclusion of the public hearing, the Governing Body passed the Ordinance creating the District and imposing the CID Sales Tax.

The purpose of creating the District is to provide the Owner with an economic incentive to undertake Project and to provide for further economic development of the City. The purpose of this Agreement is to outline the rights, duties and obligations of the Parties as they relate to the District and to provide for the reimbursement to the Owner of the Eligible Costs, but solely from the proceeds of the CID Sales Tax.

The Owner agrees to provide signage at the main entrance to the Project regarding the collection and amount of the CID Sales Tax by all businesses located within the District boundaries.

Section 3. Representations of the Parties.

(a) The City is a municipal corporation duly organized under the laws of the State. The City is authorized pursuant to the Act to create the District, levy the CID Sales Tax, to enter into this Agreement and to perform the duties and obligations of the City contained herein. The Governing Body has taken all requisite action to pass the Ordinance, which creates the District and levies the CID Sales Tax. The Agreement constitutes a valid and binding obligation of the City in accordance with its terms.

(b) The Owner is a limited liability company duly organized and existing under the laws of the State. Throughout the term of this Agreement, the Owner agrees to maintain its status as such an entity, in good standing and authorized to do business in the State. The Owner has taken all requisition action under its organizational documents to authorize the execution of this Agreement and to perform the duties and obligations of the Owner contained herein. The Agreement constitutes a valid and binding obligation of the Owner in accordance with its terms.

Section 4. Project Costs. A description of the scope of the Project and Project Costs, as estimated and submitted by the Owner, are set forth on ***Exhibit C*** attached hereto. The Owner represents that each of such costs is an Eligible Cost. In no event shall any of the following Project Costs be considered for payment or reimbursement pursuant to this Agreement: (a) costs incurred by the Owner prior to Effective Date, other than architectural and engineering fees and site development expenses; (b) legal fees incurred by the Owner; and (c) costs related to the acquisition of real property within the District. The Parties agree that the amounts of the Project Costs may be adjusted among any of the stated categories, except as provided herein, or to pay additional Project Costs not specifically listed on ***Exhibit C***, provided the total Project Costs to be reimbursed to the Owner under this Agreement do not exceed the Reimbursable Project Costs Cap.

The Project Costs will be paid by or on behalf of the Owner as a Pay-As-You-Go-Financing under the Act. The City will not advance any City funds (other than proceeds of the CID Sales Tax) for the payment of any Project Costs and will not provide any financing therefore, including issuance of any

Bonds. Project Costs incurred by the Owner, and eligible for reimbursement hereunder, will be paid by the City to the Owner solely and only from proceeds of CID Sales Tax actually received by the City from the Department of Revenue, in accordance with ***Section 5*** of this Agreement. The Owner agrees that all payments shall be paid by the City directly to the Owner.

Section 5. Administration of CID Sales Tax.

(a) Subject to and as specified by the terms and conditions of this Agreement, the City agrees to perform or provide for the performance of the administration of the financing of the Project Costs up to the Reimbursable Project Costs Cap pursuant to the Act and this Agreement. The City intends to commence on January 1, 2017 the collection and reporting of the CID Sales Tax within the District in accordance with the provisions of the Act. The imposition of the CID Sales Tax shall expire upon the earlier of (1) Twenty-two (22) years from its commencement, or (2) upon receipt of sufficient CID Sales Tax revenues to pay all Project Costs, subject to the Reimbursable Project Costs Cap, and the City Administrative Fee.

(b) Pursuant to the Act, the City shall establish the CID Sales Tax Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in trust for the benefit of the District in accordance with this Agreement. Revenues collected from the CID Sales Tax received by the City from the Department of Revenue shall be deposited in the CID Sales Tax Fund and shall not be commingled with any other funds of the City.

(c) The City shall be entitled to withdraw the City Administrative Fee annually from the distribution of CID Sales Tax received by the City from the Department of Revenue, as payment for the City's cost of administering the District.

(d) The Owner agrees to make reasonable effort to cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District to provide to the City a consent to release information regarding aggregate CID Sales Tax generated within the District to the Owner, any trustee or escrow agent appointed by the City with respect to the CID Sales Tax revenues, and the City's accountants, financial advisors and legal counsel.

(e) Except as provided in this ***Section 5(d)***, and to the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 75-5113, 79-3234 and 79-3657. In furtherance of maintaining the confidentiality of the information provided in this section, the City shall take all reasonable steps necessary to ensure that such information is kept confidential.

Section 6. Reimbursement Procedures. Reimbursement of Project Costs is conditioned upon the following:

(a) The Owner shall submit to the City Clerk a voucher (in substantially the form attached to this Agreement as ***Exhibit D***) signed by the Owner, with supporting documentation identifying the Project Costs for which the Owner seeks reimbursement. The supporting documentation shall be copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Owner for the Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Project for which reimbursement is sought, and such other documentation as the City shall reasonably request.

(b) Each invoice shall contain a certification by the Owner that each Project Cost submitted for reimbursement is an Eligible Cost, that such expense has been incurred by the Owner, and that such expense has not been previously submitted for reimbursement hereunder.

(c) The City Clerk shall present the Project Cost submitted for reimbursement to the Governing Body at the next regular meeting after the date the voucher is submitted by the Owner. The Governing Body shall determine whether the Project Cost submitted for reimbursement is an Eligible Cost and will notify the Owner of that determination within ten (10) business days of determination. If the Governing Body does not provide a response within such time period, the cost submitted on the voucher shall be deemed approved. If the Governing Body determines that such cost is not an Eligible Cost, the City Clerk shall notify the Owner of such determination in writing, setting forth in detail the basis for such denial. The Owner may appeal such denial to the Governing Body by filing a written request to be heard by the Governing Body with the Clerk within seven (7) business days of the receipt of the written denial. The Governing Body shall consider the appeal and render a decision thereon within thirty (30) days of receipt of the appeal.

(d) If money is available in the CID Sales Tax Fund, after payment of the City Administrative Fee, the requested reimbursement shall be paid to the Owner within ten (10) days of the approval by the Governing Body, if required.

(e) If the approved voucher for Project Costs reimbursement exceeds the amount then available in the CID Sales Tax Fund after payment of the City Administrative Fee, such voucher or balance thereof shall be paid within ten (10) days of receipt of sufficient CID Sales Tax revenues for deposit into the CID Sales Tax Fund. The City shall have no obligation to make any reimbursement payments to the Owner under this Agreement so long as the Owner is in default of any provision of this Agreement.

(f) The Parties agree and acknowledge that the Project may be undertaken and completed by Owner in various phases and stages over time. Owner may request reimbursement of Eligible Costs at any time hereafter and during the course of each phase or stage of the Project, until the CID Sales Tax is no longer being levied pursuant to this Agreement or the total Eligible Costs reimbursed to the Owner under this Agreement have reached the Reimbursable Project Costs Cap, whichever event shall first occur.

Section 7. City and Other Governmental Permits. Before beginning construction of any aspect of the Project, the Owner shall, at its expense, obtain or cause to be obtained any necessary permits or licenses which may be required by the City, or any other governmental agency having jurisdiction over the Project. The City agrees to provide all customary assistance to the Owner in obtaining construction permits issued by the City.

Section 8. Rights of Access. For purposes of insuring compliance with this Agreement, representatives of the City shall have rights of access to the Facility, without charges or fees, during normal business hours during the period of Project construction to inspect work performed or being performed in the construction of the Project. City representatives shall carry proper identification, insure their own safety and shall not interfere with construction activity unless such activity is apparently in violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Facility in the exercise of its proper authority to regulate for and provide for public safety.

Section 9. No Obligation to Build. Nothing contained in this Agreement shall require Owner to construct any or all aspects of the Project.

Section 10. Default and Remedies.

(a) The failure or delay by any of the Parties to this Agreement to perform any term or provision of this Agreement required of such Party, shall constitute an event of default under this Agreement, subject to rights of cure, as specified below.

(b) Notice of an event of default shall be given by the Party claiming such default to the other Parties and shall contain the basis of the claimed default.

(c) No legal proceedings against the claimed defaulting party shall be instituted nor shall the claiming Party be entitled to damages if, within fourteen (14) days from the receipt of a notice of claimed default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure correction or remedy is completed within thirty (30) days of the date such claimed defaulting Party received a notice of default. If the Party claimed to be in default cannot reasonably cure such claimed default within thirty (30) days, the claimed defaulting Party shall notify the other Party of such assertion with a proposed date to complete the cure; and default shall be suspended if the claimed defaulting Party commences curing the default within fourteen (14) days after receipt of written notice thereof and diligently prosecutes the cure to completion within the time period set forth in notice to the Party claiming the default.

(d) In the event the defaulting Party does not cure the event of default as set forth in this Section, the non-defaulting Party shall have the right to:

(1) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of the non-defaulting Party against the defaulting Party and to require and compel duties and obligations required by the provisions of the Agreement or by the laws of the State;

(2) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the non-defaulting Party;

(3) terminate this Agreement; or

(4) take such other action as may be permitted under the laws of the State.

Section 11. Governing Law, Jurisdiction.

(a) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the State.

(b) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Montgomery County, Kansas or, in the case of federal jurisdiction, in the Federal District Court for the District of Kansas.

Section 12. Rights and Remedies Cumulative, Waivers. Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 13. Amendments. The Owner and the City agree to cooperate and consider reasonable requests for amendments to this Agreement, provided that, any such amendments must be approved by the Governing Body and the Owner, shall be in writing, and shall not cause the Agreement to be in violation of the Act.

Section 14. Term. This Agreement shall commence on the Effective Date and shall terminate at such time as the CID Sales Tax is no longer in effect; provided the termination date shall be extended until such time as the City has paid all Eligible Cost reimbursements to the Owner from funds on deposit or to be deposited in the CID Sales Tax Fund.

Section 15. Transfer and Assignment. The Owner may assign this Agreement and the rights, duties and obligations hereunder with the prior written consent of the City. The Owner may assign or pledge its rights to payments due to the Owner pursuant to ***Section 6*** of this Agreement upon written notice to the City, including a copy of any agreement evidencing such assignment or pledge to such third party.

Section 16. Notices, Demands, Communications Among Parties. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. The Parties may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent. All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; and (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt.

Section 17. Entire Agreement. This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement, including the Exhibits hereto constitutes the entire agreement and understanding of the Parties. This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all of any part of the subject matter of this Agreement.

Section 18. Electronic Transactions. The transactions related thereto and described herein may be conducted and documents may be stored by electronic means

Section 19. Severability. The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 20. No Liability of City Officials or Employees. All liabilities under this Agreement on the part of the City are solely corporate liabilities of the City, and, no officer, employee, or agent of the City shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City hereunder.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

CITY OF COFFEYVILLE, KANSAS

(SEAL)

_____
Mayor

ATTEST:

_____
Clerk

NIEL HOTEL, LLC,
a Kansas limited liability company

By: _____
Name: _____
Title: _____

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EXHIBIT A
Legal Description of District

A tract of land located in a portion of Government Lot 10, of Fractional Section 31, Township 34 South, Range 17 East of the 6th Principal Meridian, Montgomery County, Kansas, said tract of land being more particularly described as follows:

Commencing at the Southwest corner of said Lot 10; thence South 88 degrees 32 minutes 02 seconds East, along the South line of said Lot 10, a distance of 632.72 feet to the East Right of Way line of Highway 166-169; thence North 28 degrees 16 minutes 47 seconds East along said East Right of Way line a distance of 44.82 feet to the POINT OF BEGINNING, said point being located on the North Right of Way line of East Eighth Street; thence continuing North 28 degrees 16 minutes 47 seconds East along said East Right of Way line a distance of 393.51 feet to the Southwest corner of a tract of land conveyed by General Warranty Deed to the City of Coffeyville as recorded in Book 541, Page 566 in the Montgomery County Register of Deeds Office; thence South 61 degrees 47 Minutes 34 seconds East along the South lien of said City of Coffeyville tract extended a distance of 387.05 feet; thence South 01 degrees 27 minutes 58 seconds West a distance of 177.04 feet to the North Right of Way line of East Eighth Street; thence North 88 degrees 32 minutes 02 seconds West along said North Right of Way line a distance of 523.16 feet to the POINT OF BEGINNING, said tract of land to convey a 20-foot wide utility easement along the North and East lines of the above description. Subject to any part thereof that may be located in highway or street Right of Way.

EXHIBIT B
Map of District

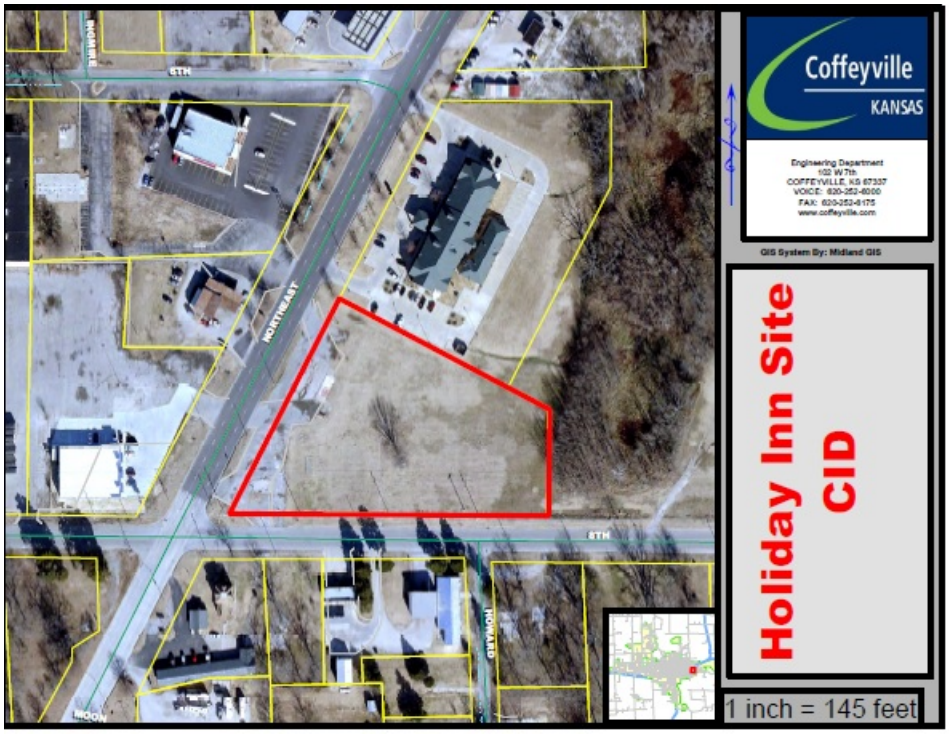

EXHIBIT C
Project Description and Estimated Costs*

EXHIBIT D

VOUCHER FOR REIMBURSEMENT
OF ELIGIBLE PROJECT COSTS

City of Coffeyville, Kansas
Attention: City Clerk

You are hereby requested by the undersigned, the Authorized Owner Representative, acting on behalf of _____ (the "Owner") to disburse funds held by the City in the Community Improvement District Sales Tax Fund created pursuant the authority in K.S.A. 12-6a26 *et seq.* and set forth in the Development Agreement Between City of Coffeyville, Kansas and _____, for Community Improvement District, dated _____ (the "Agreement") to reimburse expenditures made by the Owner for Project Costs (as defined in the Agreement) as described on and in the amounts set forth in the Schedules attached to this invoice and incorporated herein by this reference (the "Schedules").

I hereby certify that the amounts requested in the attached Schedules have been paid by the Owner in payment of Project Costs that are Eligible Costs, as defined in the Agreement.

I further certify that no part of the amounts set forth in the Schedules have been the basis for any previous withdrawal of any moneys from the Community Improvement District Sales Tax Fund.

Attached to the Schedules are copies of the contract, invoice or other billing for the Project Costs for which Owner seeks reimbursement, along with copies of checks, evidence of wire transfers or other evidence of payment by the Owner of such Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

DATED _____.

_____

By: _____
Name:
Title:

REIMBURSEMENT SCHEDULE

Pursuant ***Section 6*** of the Agreement, I hereby request reimbursement of the amounts specified below and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete and that Owner has previously paid such Project Costs:

Payee Name	Date of Payment	Purpose or Nature of Payment	Amount

_____

Initials: Owner

Note: Copies of bills, contracts, checks and other evidence reflecting the amounts shown above (as described in Section 6 of the Agreement) should be attached to this Schedule.