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City Council Agenda

City Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 16, 2008
6:00 PM

City Manager: Norton N. Bonaparte, Jr.

Mayor: William W. Buntten

Councilmembers

Lana Kennedy	District No. 1	Deborah Swank	District No. 6
John Alcala	District No. 2	Brett Blackburn	District No. 7
Sylvia E. Ortiz	District No. 3	Jeff Preisner	District No. 8
Jack Woelfel	District No. 4	Richard Harmon	District No. 9
Bill Haynes	District No. 5		

Addressing the Council: No person shall address the Council during a Council Meeting, unless they have notified the City Clerk by 5:00 P.M. on the day of any Council Meeting of their desire to speak on a specific matter on the published meeting agenda or during the public comment portion of the Council Meeting. This limitation shall not apply to items added during the course of a meeting. The Council does not take action with respect to any subject not on the agenda unless added to the agenda by a two-thirds vote of the Council.

Persons addressing the City Council will be limited to four (4) minutes of public address on a particular agenda item. Debate, question/answer dialogue or discussion between Councilmembers will not be counted towards the four (4) minute time limitation. The Chair may extend time with the unanimous consent of the Council or the Council by affirmative vote of five (5) members may extend the four (4) minute limitation.

Persons will be limited to addressing the City Council one (1) time on a particular matter unless otherwise allowed by an affirmative vote of five (5) members of the City Council.

Citizens wishing to offer Public Comment may sign up by phoning the City Clerk's office at 368-3940.

To make arrangements for special accommodations please call 785-368-3940. A 48-hour advance notice is preferred.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

(Agendas are available on Thursday afternoon in the City Clerk's office, 215 SE 7th – Room 166 and on the City's web site at <http://www.topeka.org>)

INVOCATION:

PLEDGE OF ALLEGIANCE:

1. PROCLAMATIONS:

"None scheduled at this time."

2. PRESENTATIONS:

"Topeka Police Department - 3rd Quarter Report"

3. ROLL CALL:

4. CONSENT AGENDA:

A. Workers' Compensation Settlement - Steve Roth, Jr.

APPROVAL of a Workers' Compensation Claim offering a settlement for Steve Roth, Jr., in the amount of \$19,048.50.

(Approval would permit settlement of claim.)

B. Board Appointment - Topeka Housing Authority Board of Commissioners

COMMISSION APPOINTMENT recommending the re-appointment of Nancy Artzer-May to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012. (Council District No. 1)

C. Board Appointment - Topeka Housing Authority Board of Commissioners

BOARD APPOINTMENT recommending the re-appointment of Gary Yager to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012. (3-mile Extra-territorial Jurisdiction)

D. Board Appointment - Topeka Sustainability Advisory Board

BOARD APPOINTMENT recommending the appointment of Paul Post to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010. (Council District No. 1)



[ATTACHMENTS](#)

E. Board Appointment - Topeka Sustainability Advisory Board

BOARD APPOINTMENT recommending the appointment of Gina Penzig to the Topeka Sustainability Advisory Board for a term that would end December 31, 2009. (Council District No. 8)



[ATTACHMENTS](#)

F. Board Appointment - Topeka Sustainability Advisory Board

BOARD APPOINTMENT recommending the appointment of Stan Meyers to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010. (Council District No. 7)



[ATTACHMENTS](#)

G. Final Plat - Wanamaker Northwest Subdivision (P08/24)

A FINAL PLAT for Wanamaker Northwest Subdivision located at 6209, 6211, and 6213 SW 10th Avenue within the corporate limits of the City of Topeka. (P08/24) (Council District No. 9)



[ATTACHMENTS](#)

(Approval would plat a 2-lot subdivision for hotel and retail uses.)

H. MINUTES of the regular meeting of December 9, 2008

I. APPLICATIONS:

J. Workers' Compensation Settlement - Connie Potter

APPROVAL of a Workers' Compensation Settlement for Connie Potter in the amount of \$68,000.

This item was added at the meeting.

(Approval would permit settling a workers' compensation claim.)

5. PUBLIC HEARINGS:

A. Public Hearing and Ordinance - Street Improvement Project No. 60626



[ATTACHMENTS](#)

A PUBLIC HEARING for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk, on all lots, parcels and pieces of ground liable for the cost of improvement, same being Street Improvement Project No. 60626, authorized by Resolution No. 7943, adopted and approved May 1, 2007.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Wanamaker West Subdivisions No. 2 and No. 3, with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60626 as defined and described in Resolution No. 7943, adopted and approved May 1, 2007. **Final Reading.** *(Council District No. 8)*

(Approval would apportion and levy a special assessment for the street improvement and will be paid 100% by the Improvement District. The project is located near SW 30th Terrace and Wanamaker Road. The final project cost is \$291,323.61.)

6. UNFINISHED BUSINESS:

A. Charter Ordinance - Fire Department - Civil Service Hiring Process



[ATTACHMENTS](#)

A CHARTER ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section A6-16 and Section A6-17, and repealing said original sections. **Final Reading.** *(Deferred from the meeting of November 25, 2008.)*

(Approval would clarify the civil service hiring process affected by City ordinances and repeal an ordinance requiring a Fire Promotion Board.)

B. Ordinance - Fire and Police Department Personnel Selection Process



[ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., repealing City of Topeka Code Sections 106-44, 106-46, 106-47, 106-49, 106-52, and 106-74 concerning police officers and firefighters civil service commission and classification and pay plan. **Final Reading.** *(Deferred from the meeting of November 25, 2008.)*

(Approval would amend City Code to clarify which positions in the Fire and Police Departments are subject to the Civil Service Commission and repeals the section relating to promotions.)

C. Resolution - Consolidated Rural Water District No. 1



[ATTACHMENTS](#)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Attorney's office to take all appropriate legal action necessary to collect monies owed by Consolidated Rural Water District No. 1 to the City of Topeka. *(Deferred from the meeting of December 9, 2008.)*

(Approval would direct and authorize the City's Legal Department to take all appropriate legal action to collect the \$400,000 owed by CRWD No. 1.)

7. NEW BUSINESS:

A. Real Estate Report and Real Property Purchase Agreement - Faith Temple Church, Inc.



[ATTACHMENTS](#)

APPROVAL of the real estate report and Real Property Purchase Agreement including the method of disposal between the City of Topeka and Faith Temple, Inc., for property located at 1155 SW Lincoln Street.

(Property has been approved for disposal by all City Departments and a request for authorization of City Manager to execute any and all documents or instruments to close the real estate transaction.)

B. Resolution - Rochester Cemetery

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember John Alcala, requesting the City of Topeka to provide financial assistance in the amount of \$60,000 for maintenance of Rochester Cemetery. (Council District No. 2)

(Approval would provide funds to assist with the maintenance costs of the cemetery.)

C. Resolution - 2008 City of Topeka Corporate Limits and Boundaries

 [ATTACHMENTS](#)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8024. (All Council Districts)

(Approval would adopt the entire corporate boundary of the City of Topeka.)

D. Ordinance - Weekly Expenditures - November 24-30, 2008

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 24, 2008, through November 30, 2008, and enumerating said expenditures therein. First and Final Reading.

E. Resolution - Fleming Court Apartments

 [ATTACHMENTS](#)

A RESOLUTION introduced by Norton N. Bonaparte, Jr., City Manger, consenting to a leasehold mortgage in connection with a facility financed with multifamily housing refunding revenue bonds concerning a project at Fleming Court Apartments.

This item was added at the meeting.

(The existng Lease states that before the Borrower can incur another mortgage with respect to the leased property, the written consent of the City is required. This mortgage will be subordinate to the outstanding Bonds.)

8. ZONING:

A. Ordinance - Wanamaker Northwest (PUD08/2)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made part of the Zoning Ordinances by Section 48-1.03 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 6209, 6211, 6213 SW 10th Avenue in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District and "C-2" Commercial District ALL TO "PUD" Planned Unit Development District ("C-2" use group). Final Reading. (PUD08/2)(Council District No. 9)

(Approval would allow for hotel/retail uses and a pole sign height of 69 feet.)

B. Ordinance - Curtis Cemetery (HL08/04)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned "OS-1" Open Space District and located at 1638 NW Harrison Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. Final Reading. (HL08/04) (Council District No. 2)

(Approval would add historic landmark overlay zoning to the Curtis Cemetery.)

C. Ordinance - Pioneer Adams II, L.C. (PUD08/5)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at southeast corner of SE Adams and SE 21st Street from "R-1 Single Family Dwelling District and "C-2" Commercial District ALL TO "PUD" Planned Unit Development District ("M-2" use group). Final Reading. (PUD08/5) (Council District No. 4)

(Approval would allow development of 49 dwelling units for affordable housing on a 3.98 acre property.)

D. Ordinance - Planned Unit Development District Amendments (ACZR08/1)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending City of Topeka Code Section 48-24.01 through 48-24.07 concerning planned unit development districts and specifically repealing said original sections. Final Reading. (ACZR08/1)

(Approval would amend the zoning regulations by making properties less than 1 acre eligible to be re-zoned PUD as "transition areas" and providing flexibility in amending and recording PUDs.)

9. FIRST READINGS:

A. Ordinance - Trafficway Improvement Project No. 70114-03

 [ATTACHMENTS](#)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70114-03, which provides for widening Gage Boulevard from 10th to 12th Streets, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and repealing City of Topeka Ordinance No. 18956. First Reading. (Council District No. 9)

(Approval would authorize a total project budget in the amount of \$1,188,000 for the widening of Gage Boulevard from 10th to 12th Streets.)

10. MISCELLANEOUS:

-

11. PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL:

-

12. PUBLIC COMMENT:

-

13. ADJOURNMENT:

-



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

"None scheduled at this time."

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

"Topeka Police Department - 3rd Quarter Report"

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 24, 2008

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DATE: December 16, 2008
CONTACT PERSON: Celeste Benton **DOCUMENT #:**
SECOND PARTY/SUBJECT: Topeka Housing Authority **PROJECT #:**
Board of Commissioners
CATEGORY/SUBCATEGORY 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

COMMISSION APPOINTMENT recommending the re-appointment of Nancy Artzer-May to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012. *(Council District No. 1)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Nancy Artzer-May, 1301 SW Fillmore, to the Topeka Housing Authority Board of Commissioners for a four year term that will end December 31, 2012. This is a statutory board wherein the Mayor nominates and Council approves. There is no official attendance policy, however, there have been thirty-two meetings and Ms. Artzer-May has missed six meetings.

BACKGROUND:

KSA 17-2341. The Topeka Housing Authority Board of Commissioners plan and study the public housing needs of the city and is the governing board of the Topeka Housing Authority.

From and after July 2, 2008, any appointment to any board, commission, advisory group or other body made by the mayor of any city which is subject to approval of the governing body of the city must be acted upon by the governing body within 45 days of the appointment by the mayor or the appointment shall be deemed approved. The governing body of the city shall approve such appointment unless the governing body makes a specific finding by the passage of a resolution that the person is either unqualified to hold the office or is not fit to hold the office or the position.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

Item #7

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 25, 2008

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DATE: December 16, 2008
CONTACT PERSON: Celeste Benton **DOCUMENT #:**
SECOND PARTY/SUBJECT: Topeka Housing Authority **PROJECT #:**
Board of Commissioners
CATEGORY/SUBCATEGORY 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

BOARD APPOINTMENT recommending the re-appointment of Gary Yager to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012. *(3-mile Extra-territorial Jurisdiction)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the re-appointment of Gary Yager, 3521 SW Lincolnshire Rd., to the Topeka Housing Authority Board of Commissioners for a four year term that will end December 31, 2012. This is a statutory board wherein the Mayor nominates and Council approves. There is no official attendance policy, however there have been thirty-two meetings and Mr. Yager has missed twelve meetings.

BACKGROUND:

KSA 17-2341. The Topeka Housing Authority Board of Commissioners plan and study the public housing needs of the city and is the governing board of the Topeka Housing Authority. The Kansas Municipal Housing Act defines the "area of operation" of a Housing Authority as the municipality and the area within five miles of the territorial city boundaries thereof. Appointments may be made of any persons who reside within its boundaries or area and who are otherwise eligible for appointments under the act.

From and after July 2, 2008, any appointment to any board, commission, advisory group or other body made by the mayor of any city which is subject to approval of the governing body of the city must be acted upon by the governing body within 45 days of the appointment by the mayor or the appointment shall be deemed approved. The governing body of the city shall approve such appointment unless the governing body makes a specific finding by the passage of a resolution that the person is either unqualified to hold the office or is not fit to hold the office or the position.

BUDGETARY IMPACT:

N/A

Item #8

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available



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Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 18, 2008

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DATE: December 16, 2008
CONTACT PERSON: Celeste Benton **DOCUMENT #:**
SECOND PARTY/SUBJECT: Topeka Sustainability **PROJECT #:**
Advisory Board
CATEGORY/SUBCATEGORY 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

BOARD APPOINTMENT recommending the appointment of Paul Post to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010. (Council District No. 1)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the appointment of Paul Post, 2101 SW 2nd St., to a two year term on the Topeka Sustainability Advisory Board. Mr. Post was nominated by Councilwoman Swank. A copy of his bio is attached for review.

BACKGROUND:

Ordinance 19165. The purpose of the nine member board is to promote environmental awareness and advocate for policies which support sustainability. Of the 9 members first appointed, four members shall serve one year terms, and five members shall serve two year terms. At least five of the nine members shall be currently licensed, have a degree in, or be engaged in, or have substantial past experience in the fields of environmental awareness, waste reduction, recycling, energy conservation and/or natural resource conservation or a similar field relating to the environment or conservation.

From and after July 2, 2008, any appointment to any board, commission, advisory group or other body made by the mayor of any city which is subject to approval of the governing body of the city must be acted upon by the governing body within 45 days of the appointment by the mayor or the appointment shall be deemed approved. The governing body of the city shall approve such appointment unless the governing body makes a specific finding by the passage of a resolution that the person is either unqualified to hold the office or is not fit to hold the office or the position.

BUDGETARY IMPACT:

N/A

Item #9

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Post Bio - SAB](#)

Paul Post: *Curriculum vitae*

Paul was born in 1949 in Concordia, Kansas, and graduated from Concordia High School in 1967. He received his Bachelor of Arts degree, *cum laude*, from Kansas State University with a dual major of history and pre-law. He graduated from the University of Kansas School of Law in 1974. Paul then entered the U.S. Air Force as a captain in the judge advocate department, serving at Minot Air Force Base in North Dakota until 1978 as chief prosecutor.

After leaving the Air Force, Paul returned to Kansas and entered the private practice of law. The Law Office of Paul D. Post, P.A. focuses on the areas of bankruptcy, family law, injury cases, and small estates.

Paul is past president of the board of directors of Kansas Legal Services, past president of the Topeka Area Bankruptcy Council, and past chairman of the Topeka Bar Association Public Service Committee. He is past president of the Greater Auburndale Neighborhood Association, having resided in that neighborhood since 1980. Paul is a regular volunteer at the Helping Hands Humane Society and the Cat Association of Topeka, and is an underwriter for the Sunflower Music Festival since 2004, the Kansas Silent Film Festival since 2001, and Topeka Civic Theater since 1998. He is chairman of the Topeka Group of the Sierra Club, Kansas Chapter, and member of the executive board of the Kansas Sierra Club, and is also a member of the Topeka Audubon Society.

He resides at 2101 SW 2nd Street in Topeka with his long-time companion and friend, Kay Kelly, a clinical social worker, who is one of the founding members of Heritage Mental Health Clinic here in Topeka. Paul's hobbies include bird watching and home improvement projects.



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 21, 2008

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DATE: December 16, 2008
CONTACT PERSON: Celeste Benton
SECOND PARTY/SUBJECT: Topeka Sustainability Advisory Board
CATEGORY/SUBCATEGORY 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

BOARD APPOINTMENT recommending the appointment of Gina Penzig to the Topeka Sustainability Advisory Board for a term that would end December 31, 2009. (Council District No. 8)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending the appointment of Gina Penzig, 2424 SW Romar Rd., to a one year term on the Topeka Sustainability Advisory Board. Ms. Penzig was nominated by Councilwoman Swank. Ms Penzig oversees her employer's public education efforts around energy efficiency initiatives. A copy of her bio is attached for review.

BACKGROUND:

Ordinance 19165. The purpose of the nine member board is to promote environmental awareness and advocate for policies which support sustainability. Of the 9 members first appointed, four members shall serve one year terms, and five members shall serve two year terms. At least five of the nine members shall be currently licensed, have a degree in, or be engaged in, or have substantial past experience in the fields of environmental awareness, waste reduction, recycling, energy conservation and/or natural resource conservation or a similar field relating to the environment or conservation.

From and after July 2, 2008, any appointment to any board, commission, advisory group or other body made by the mayor of any city which is subject to approval of the governing body of the city must be acted upon by the governing body within 45 days of the appointment by the mayor or the appointment shall be deemed approved. The governing body of the city shall approve such appointment unless the governing body makes a specific finding by the passage of a resolution that the person is either unqualified to hold the office or is not fit to hold the office or the position.

BUDGETARY IMPACT:

N/A

Item #10

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Penzig Bio - SAB](#)

Celeste Benton

From: Deborah Swank [djswank@cox.net]
Sent: Thursday, November 20, 2008 2:31 PM
To: Celeste Benton; Bill Bunten
Subject: SAB bio

Mayor Bunten,

I would like to nominate Gina Penzig to the Sustainability Advisory Board. Please find her bio below. Let me know if you have any questions.

Deborah Swank

Gina Penzig is manager of consumer services for Westar Energy. In this role she oversees the company's public education efforts around energy efficiency initiatives, including weatherization for low income and senior customers, speaker's bureau, school outreach and trade show representation. The company's energy efficiency initiatives, launched in 2008, have reached more than 65,000 people in their inaugural year.

Ms. Penzig has worked seven years for Westar Energy, starting in corporate communications. During the 2007 ice storm, the worst in the company's history, she coordinated the company's communication efforts and media outreach to keep the public informed regarding power outages and restoration efforts. Prior to joining Westar, she worked for The Topeka Capital-Journal.

In 1996, Ms. Penzig earned her bachelor's degree in Mass Media summa cum laude from Washburn University, where she is currently pursuing a master's of business administration.

A Topeka native, she is also active in the community having served as president of the local chapter of the International Association of Business Communicators, vice president of the board of Community Preschool and volunteering with a variety of organizations.

Ms. Penzig resides with her husband, Kris, and daughter, Vivian, at 2424 SW Romar Rd., Topeka, Kansas, 66614.



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Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 17, 2008

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DATE: December 16, 2008
CONTACT PERSON: Celeste Benton
SECOND PARTY/SUBJECT: Topeka Sustainability Advisory Board
CATEGORY/SUBCATEGORY 006 Communication / 003 Requests
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

BOARD APPOINTMENT recommending the appointment of Stan Meyers to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010. *(Council District No. 7)*

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

The Mayor is recommending Stan Meyers, 5822 SW 35th, to a two year term on the Topeka Sustainability Advisory Board. Mr. Meyers was nominated by Councilman Preisner. Mr. Meyers has specialized training in Green infrastructure and sustainable communities and has established a sustainable design task force within his organization. His bio is attached for review.

BACKGROUND:

Ordinance 19165. The purpose of the nine member board is to promote environmental awareness and advocate for policies which support sustainability. Of the 9 members first appointed, four members shall serve one year terms, and five members shall serve two year terms. At least five of the nine members shall be currently licensed, have a degree in, or be engaged in, or have substantial past experience in the fields of environmental awareness, waste reduction, recycling, energy conservation and/or natural resource conservation or a similar field relating to the environment or conservation.

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BUDGETARY IMPACT:

N/A

Item #11

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Meyers Bio - SAB](#)

Preisner
November

STAN MEYERS, PE



Technical Specialties

- Development Codes
- Housing and Real Estate Development
- Site Planning
- Subdivision Design and Platting
- Zoning and Land Use Planning

Education

- Master of Urban Planning, University of Kansas, 1997
- M.S. in Civil Engineering, Kansas State University, 1991
- B.S. in Civil Engineering, Kansas State University, 1986

Special Programs

- ACEC - *Green Infrastructure and Sustainable Communities*, 2007
- Mid-America Regional Council (MARC) - *Academy of Sustainable Communities*, 2008

Organizations

- Urban Land Institute
- American Planning Association
- Chi Epsilon (Honor Society)

Registrations

- Professional Engineer - Kansas

Stan brings his diverse mix of clients a special understanding of the development and growth issues facing communities in our region. Clients appreciate his expertise in the areas of infrastructure, urban planning, and land development, which results in well-designed projects planned to meet the specific needs of the client and the general goals of the community.

Stan's responsibilities typically call for his skills in concept planning, platting and zoning, coordination with government and public agency requirements, engineering design and construction administration. His project experience includes residential subdivisions, elderly-living complexes, commercial shopping centers, business and office parks, university campuses and military bases, and the preparation of comprehensive plans and development codes.

In recent years, Stan has become more involved in strategic planning and company-wide initiatives at Bartlett & West. In July of 2007 he completed special training at the American Council of Engineering Companies (ACEC) seminar on *Green Infrastructure and Sustainable Communities*. Following this, Stan established a sustainable design task force at Bartlett & West to study the importance of sustainability and evaluate how to implement appropriate actions and policies into practice. The result of this six-month effort was "A Business Case for Sustainable Design & Development: that outlined a three-phase implementation plan for the firm.

Some of the projects managed by Stan have included:

- **College Hill Redevelopment Project - Topeka, KS**
College Hill is a mixed-use redevelopment project established by a special Tax Increment Finance District to help fund needed public infrastructure and economic development in an inner core Topeka neighborhood. The \$30M project consists of approximately ten acres and includes retail commercial, office, apartment and row houses residences designed in a New Urbanist style. Bartlett & West provided all survey, civil and landscape architecture design services for this project.
- **City of Atchison, Kansas – Benedictine College**
Site improvements to Freshman Hall.
- **Douglas County, Kansas – Chicken Creek Bridge**
Historic bridge restoration and road relocation project.
- **City of Lawrence, Kansas – University of Kansas**
Memorial Football Stadium.
Allen Fieldhouse Basketball Arena.
KU Volleyball/Basketball Gymnasium.
- **City of Topeka, Kansas – Great Overland Station**
Prepared site improvements to the historic Union Pacific Train Depot.
- **City of Topeka, Kansas – Washburn University**
Student Wellness Center new construction project.
Plass Avenue street connection project.
College Avenue street improvements.



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2008

+ Back Print

DATE:	December 16, 2008		
CONTACT PERSON:	David Thurbon/Bill Fiander	DOCUMENT #:	P08/24
SECOND PARTY/SUBJECT:	Wanamaker Northwest Subdivision	PROJECT #:	N/A
CATEGORY/SUBCATEGORY	017 Plats/002 Final		
CIP PROJECT:	No		
ACTION OF COUNCIL:	JOURNAL #:		
	PAGE #:		

DOCUMENT DESCRIPTION:

A FINAL PLAT for Wanamaker Northwest Subdivision located at 6209, 6211, and 6213 SW 10th Avenue within the corporate limits of the City of Topeka. (P08/24) (Council District No. 9)

(Approval would plat a 2-lot subdivision for hotel and retail uses.)

POLICY ISSUE:

Consistent with City Subdivision Regulations.

STAFF RECOMMENDATION:

The Planning Commission recommended the final plat phase of Wanamaker Northwest Subdivision be **APPROVED** by a vote of **6-0-0** at their **November 24, 2008** monthly meeting as referenced in the attached minutes. The Planning Department recommended this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See attached staff report.
- City Council options:
- (1) Accept the plat as presented for recording by the Shawnee County Register of Deeds, or;
- (2) Reject the plat so it would **not** be eligible for recording by the Shawnee County Register of Deeds.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Staff report](#)

Item #12

[aerial photo](#)

[PC minutes 10-20-08-Preliminary plat](#)

[Planning Commission Minutes](#)

DRAFT

**Minutes of the
Topeka Planning Commission
October 20, 2008**

Wanamaker Northwest Development – Annie Driver summarized the staff report for both the zoning and subdivision discussion is for both as well. Annie informed the commission a new PUD and plat was passed out tonight and there hasn't been time for review but the applicant had verbally agreed to all conditions in the staff report.

Discussion by members:

Doug Bassett asked if staff agreed with the plat and PUD the applicant's representative presented tonight? Mrs. Driver replied as far as she could see they revised both in accordance with conditions in the staff reports.

Doug Bassett asked for explanation of the sign allowed? Mrs. Driver stated the Phillips 66 sign is grandfathered in and is taller than all signs in the area. It has been there since before the property was in the city. Mr. Bassett said your study included a crane? Mrs. Driver replied yes. She stated she went out with the applicant to see how high the sign would need to be to still have view from the interstate. It was set at 70 feet.

Proponents:

Dan Cook, Level 4 Engineering, stated they agree with the staff reports. He said the revisions passed out were based off of the staff report for the PUD and plat.

- a. **PUD08/2 Wanamaker Northwest PUD** by Wanamaker North LC requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development District (C-3" use group) on property located at 6209, 6211 and 6213 SW 10th Avenue. **(Driver)**

Exparte communications - none

Jim Brown moved approval as written by staff, seconded by John Federico. **APPROVAL. (6-0-0) Mark Boyd was out of the room.**

- b. **Wanamaker Northwest Subdivision (Preliminary Plat Phase)(P08/24)** by Wanamaker North LC on property located at 6209, 6211 and 6213 SW 10th Avenue. **(Driver)**

Jim Brown moved approval as written by staff and adding the same note to the plat as the PUD regarding street benefit district, seconded by Federico. **APPROVAL. (6-0-0) Mark Boyd was out of the room.**

November 17, 2008
Agenda Item # E-1

SUBDIVISION REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

Preliminary Plat Phase

Preliminary and Final Plat Phase

Final Plat Phase

NAME: Wanamaker Northwest Subdivision - [P08/24]

OWNER/DEVELOPER: Wanamaker North L.L.C.

ENGINEER/SURVEYOR: Level 4 Engineering

GENERAL LOCATION: 6209, 6211, 6213 SW 10th Avenue

PARCEL ID NUMBERS: 0993204001002000, 0993204001003000, and 0993204001004000

JURISDICTION: Class "A" subdivision- within the City of Topeka

ANNEXATION: N/A

Area	# of Lots	Residential Density	Proposed Land Use	Zoning
2.88 acres	2	N/A	Commercial	C-2 and R-1*
Pending Zoning Case: A proposal (PUD08/2) to rezone the property to "PUD" Planned Unit Development (C-2 use group) was recommended for approval by the Planning Commission on October 20, 2008.				
Design: The subject plat creates Lots 1 and 2, Block A for a proposed hotel and restaurant/retail building. The property is rectangular in shape measuring approximately 377' X 346' with lots fronting on to SW 10 th Avenue.				

BACKGROUND: The preliminary plat was approved by the Planning Commission on October 20, 2008.

SERVICES AND FACILITIES:

1. **WATER SERVICE:** The development is to be serviced by the City of Topeka public water supply and distribution system by means of a 12" water main, with all connections being at the developer's expense, located on the north side of SW 10th Avenue.
2. **SEWAGE DISPOSAL:** The development is to be serviced by the City of Topeka public wastewater treatment plant and collection system by means of connection to a 8" sanitary sewer main, with all connections being at developer expense, located on the north side of SW 10th Avenue.
3. **WASTEWATER PLAN SERVICE AREA:** The property is located within the Urban Service Area which requires service by a sanitary sewer system as reflected by the Shawnee County Wastewater Management Plan. The proposal appears to be in full compliance with said Plan.
4. **DRAINAGE CONDITIONS:** The Drainage Report as submitted by the Consultant to the City of Topeka Department of Public Works has not been approved per memo dated July 24, 2008. Minimum opening elevations and drainage easements covering the 100-year flow still need to be reflected on the plat

November 17, 2008
Agenda Item # E-1

accordingly.

5. STREET PLAN/ACCESS: The plat dedicates 52.5' of right-of-way for future improvement to SW 10th Avenue (minor arterial), which is currently only improved for 2-lanes. The plat denotes access control along SW 10th Avenue. Two access openings will be permitted along SW 10th to be determined at site plan review as referenced by plat note.
6. FIRE DISTRICT: City of Topeka
7. STREAM BUFFER: The property is affected by a Type II stream along the south property lines, which typically requires a 50' buffer. Water Pollution Control has approved a variance to reduce this buffer width to 21' from the south property line of Lot 1 and 29.33' from the south property line of Lot 2 and encroach upon this buffer for parking a maximum of 2' for Lot 1 and 6.33' for Lot 2.
8. SCHOOL DISTRICT: U.S.D. 437- Auburn/Washburn Rural School District
9. PARKS/OPEN SPACE: N/A

WAIVER/VARIANCE TO STANDARDS: N/A

CAPITAL IMPROVEMENT PLAN (CIP): The CIP (2007-2011) includes no projects planned for this area.

CONFORMANCE TO COMPREHENSIVE PLAN: The Topeka Land Use and Growth Management Plan 2025 establishes this area for *Commercial/Office* land uses.

STAFF ANALYSIS:

The overall design conforms to the established standards and provisions of the subdivision regulations relative to design criteria. The subdivision is compatible with adjacent development and should not overburden existing public infrastructure facilities. However, the subdivision's proximity to the existing stream buffer, associated variances allowing encroachment into this buffer, their relation to the PUD site plan, and any necessary drainage easements make the drainage issues an important factor in the proposed development and should be resolved prior to Planning Commission approval. Therefore, staff recommends **CONTINUANCE** of the plat if the City Engineer has not approved the Drainage Report by this meeting. If the City Engineer approves the Drainage Report by this meeting, the Planning Department recommends the final plat phase of Wanamaker Northwest Subdivision be **APPROVED**, subject to:

1. Amending final plat to include minimum opening elevations, drainage easements, and any other conditions that may arise, as required by the City Engineer.
2. Removal of Note #1 under Variances, which applies to the PUD only.
3. Revising Note # 8 to state, "Cross access shall be provided between Lots 1 and 2 and also with the adjacent unplatted property to the west. Said cross access shall be binding upon the heirs, successors, executors, administrators, trustees, and assigns of said owners."
4. Making all type legible for copying.

Prepared by:
Annie Driver, Planner I

November 17, 2008
Agenda Item # E-1



P08/24 Wanamaker Northwest Subdivision

DRAFT

MINUTES OF THE TOPEKA PLANNING COMMISSION POLICY BOARD
Monday, November 24, 2008
620 SE MADISON STREET, HOLLIDAY CONFERENCE ROOM
TOPEKA, KANSAS

Wanamaker Northwest Subdivision (Final Plat Phase P08/24) – continued from November 17th Planning Commission meeting.

Bill Fiander, Deputy Planning Director stated this plat creates 2 lots. Lot 1 is for a proposed hotel and restaurant/retail building in which the building site area has already been determined by the developer. The specific use and building site area for Lot 2 is still unknown to the developer at this time. Mr. Fiander stated the recommendations made tonight regarding the drainage easement covering the entire property is on Lot 1. Which is to carve out the footprint of building and show this on the plat as an area except the drainage easement. Lot 2 would be shown on the plat entirely covered by a drainage easement. Staff has also requested the developer reflect these changes on the PUD plan also. Mr. Fiander stated the developer would like staff to preliminarily review the site plan for Lot 1 so as to not face any technicalities at the building permit stage. Ms. Hoferer asked if there is something new to review tonight? Mr. Fiander replied you don't have a graphic, but you do have proposed language to be added to the plat reflecting these changes that the applicant will make and submit for staff to review. Ms. Hoferer asked if this item should be continued? Mr. Fiander replied that would be up to the Commission.

MOTION: Theron Sims moved to approve the plat with the new language.

Mr. Fiander stated Shawn Bruns, City Engineer has reviewed and approved the language in terms of what needs to be done to bring buildings out of flood plain. Ms. Hoferer asked if Braxton Copley, Assistant City Attorney agreed with the revised language? Mr. Copley replied yes. Mr. Fiander stated for the record, the plat before you was continued from the previous meeting because there was no an approved drainage report from Engineering. He added the discussion at this meeting between the developer, their representatives, the City Engineer, Assistant City Attorney and staff essentially led to approving information necessary to permit development on the site. Mr. Copley stated the appropriate motion would be to approve plat subject to including plat notes. Ms. Hoferer asked what about the other conditions listed in the staff report? Item numbers 2, 3, and 4? Ms Driver replied the only staff conditions remaining, which are not reflected on the revised plat, is staff condition #2 related to removal of Note #1 under Variances applying to the PUD only. Ms. Hoferer stated the motion should be to approve with revised language discussed tonight and to comply with staff condition #2 in staff report. Mr. Fiander stated staff would like to ask that these changes be reflected on the PUD plan, as well.

Michelle Hoferer stated Mark Boyd will not be voting due to a conflict of interest.

REVISED MOTION: Theron Sims moved approval with revised language and staff condition #2 in the staff report, seconded by Howard Blackmon. **APPROVAL, 6-0-0, Mark Boyd was out of the room.**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 10, 2008

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DATE: December 16, 2008
CONTACT PERSON: Eric B. Smith, Asst. City Attorney
DOCUMENT #:
SECOND PARTY/SUBJECT: Connie Potter
PROJECT #:
CATEGORY/SUBCATEGORY 006 Communication / 005 Other
CIP PROJECT: No
ACTION OF COUNCIL:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

APPROVAL of a Workers' Compensation Settlement for Connie Potter in the amount of \$68,000.

This item was added at the meeting.

(Approval would permit settling a workers' compensation claim.)

POLICY ISSUE:

Whether the City Council wants to agree to settle a Workers' Compensation Claim. The alternative would be to fully defend the matter through the Workers' Compensation system.

STAFF RECOMMENDATION:

Approve the proposed settlement offer.

BACKGROUND:

The City Attorney's office has reached a conditional agreement, subject to Council approval, to settle Connie Potter's Workers' Compensation claim in the amount of \$68,000.00.

BUDGETARY IMPACT:

\$68,000.00

SOURCE OF FUNDING:

City of Topeka's self-insured workers' compensation fund.

ATTACHMENTS:

No Attachments Available



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 2, 2008

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DATE: December 16, 2008
CONTACT PERSON: Mark Schreiner **DOCUMENT #:**
SECOND PARTY/SUBJECT: Street Improvement **PROJECT #:** 60626-00
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 008 Special Assessments
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

A PUBLIC HEARING for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk, on all lots, parcels and pieces of ground liable for the cost of improvement, same being Street Improvement Project No. 60626, authorized by Resolution No. 7943, adopted and approved May 1, 2007.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Wanamaker West Subdivisions No. 2 and No. 3, with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60626 as defined and described in Resolution No. 7943, adopted and approved May 1, 2007. Final Reading. (Council District No. 8)

(Approval would apportion and levy a special assessment for the street improvement and will be paid 100% by the Improvement District. The project is located near SW 30th Terrace and Wanamaker Road. The final project cost is \$291,323.61.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Approve the Ordinance for Special Assessments as presented.

BACKGROUND:

The project provides street improvements on SW 30th Terrace from SW Wanamaker Road west approximately 772 feet with asphaltic concrete pavement, curb and gutter, storm sewer, sidewalks, and all other contingencies needed for a complete project.

BUDGETARY IMPACT:

FINAL PROJECT COST = \$291,323.61
Improvement district will pay 100% of the costs.

Item #16

Total Front Footage = 1,543.25 feet. Cost Per Front Footage = \$188.773

Assessment is on a linear foot of frontage basis for all lots abutting the street which are included in the described improvement district.

Improvement District consist of the following:

Lots 1 and 3, Block "A", Wanamaker West Subdivision No. 3

Lots 1 through 4, Block "B", Wanamaker West Subdivison No. 2

SOURCE OF FUNDING:

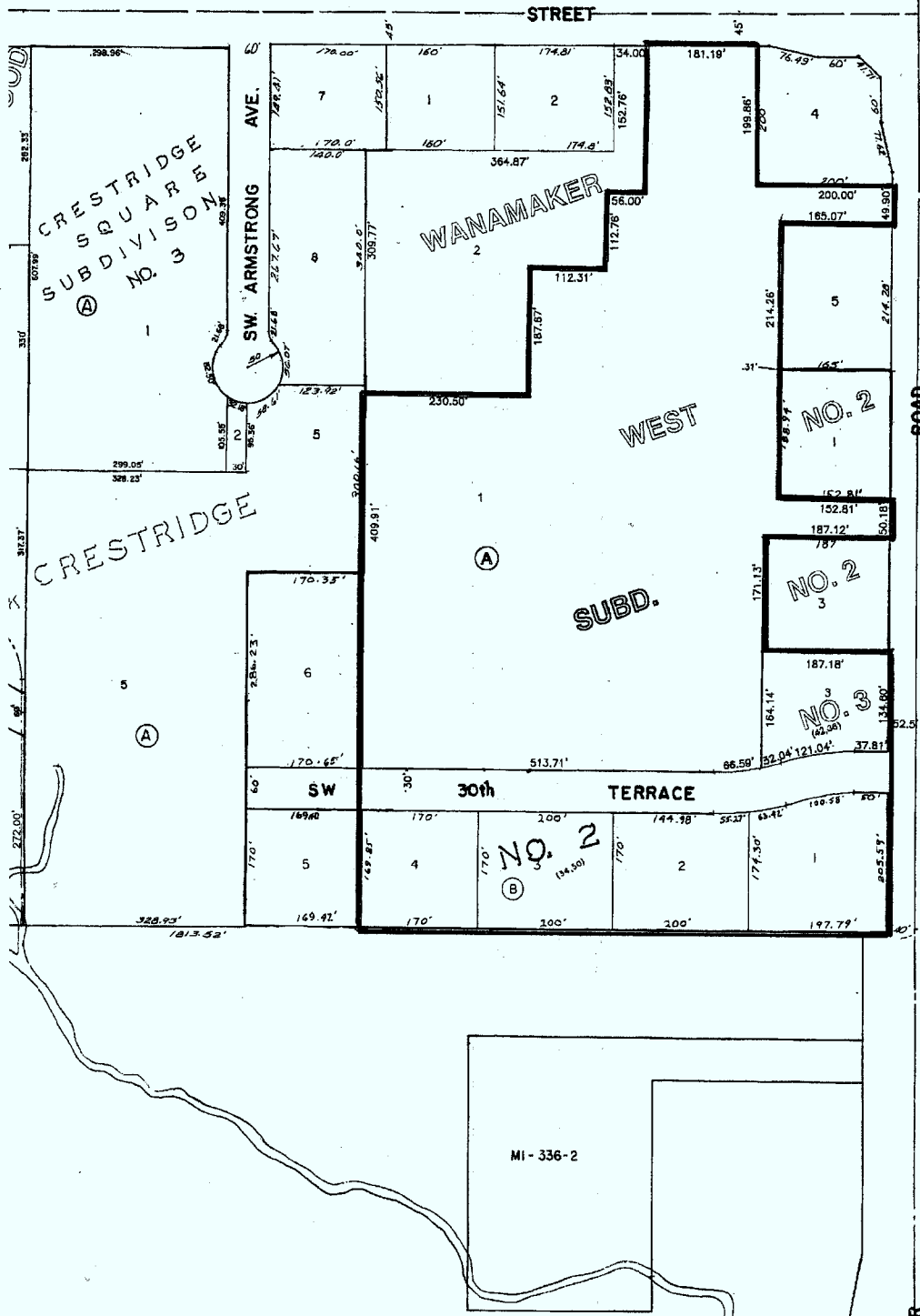
100% paid by the Improvement District either by direct payment of assessment or through annual assessments to cover debt service on general obligation bonds.

ATTACHMENTS:

[Vicinity Map](#)

[Assessment Ordinance](#)

[Public Hearing Notice](#)



SEE PLAT K-1

CITY OF TOPEKA, KS

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Label



1 inch equals 2 feet

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Wanamaker West Subdivisions No. 2 and No. 3, with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60626 as defined and described in Resolution No. 7943, adopted and approved May 1, 2007.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. For the purpose of paying the cost of pavement, curb and gutter and all other contingencies needed to complete the project, same being Street Improvement Project No. 60626-00, in the City of Topeka, Shawnee County, Kansas, there is hereby levied and assessed a special assessment on all lots and pieces of ground liable therefore.

Said assessments are computed as follows:

A. GENERAL NATURE OF IMPROVEMENT:

To pave 29 feet in width from SW Wanamaker Road west approximately 772 feet known as SW 30th Terrace with asphaltic concrete pavement curb and gutter, storm sewer and sidewalks. Included with the project is engineering and all other contingencies needed for a complete project.

B. IMPROVEMENT DISTRICT:

WANAMAKER WEST SUBDIVISION NO. 2

Lots 1 through 4, Block B

WANAMAKER WEST SUBDIVISION NO. 3

Lots 1 and 3, Block A

C. METHOD OF ASSESSMENT:

On a linear foot of frontage basis for all lots abutting the street which are included in the improvement district.

D. TOTAL COST & APPORTIONMENT OF COSTS:

FINAL PROJECT COST = \$291,323.61

Section 2. The several amounts are apportioned, levied and assessed against each of said lots and pieces of ground according to the benefits to be derived by reason of the aforesaid improvements, (except the interest hereinafter mentioned) as follows:

STREET IMPROVEMENT PROJECT NO. 60626-00

Parcel Identification Number	Description	Assessment
------------------------------------	-------------	------------

WANAMAKER WEST SUBDIVISION NO. 3

BLOCK A

1441701001008000	Lot 1	\$109,544.85
1441701001008030	Lot 3	\$36,034.84

WANAMAKER WEST SUBDIVISION NO. 2

BLOCK B

1441701001009000	Lot 1	\$38,096.24
1441701001009000	Lot 2	\$37,801.75
1441701001009000	Lot 3	\$37,754.56
1441701001009000	Lot 4	\$32,091.37

Section 3. Such assessments with accrued interest are hereby levied concurrent with general property taxes and shall be payable in twenty (20) equal annual installments; the first installment to be payable at the time of the first payment of the general property taxes, following the publication of this Ordinance.

Section 4. All assessments shall bear interest in an amount not to exceed the legal rate established by law.

Section 5. The owner of any property so assessed may at any time prior to 30 days from the date of publication of this Ordinance, pay the whole of the assessment against any lot or parcel with interest accrued to the date of payment, to the City Treasurer.

Section 6. Assessments not paid prior to the date provided in Section 5 hereof, shall be certified, together with interest accrued, or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk

(Published in The Topeka Metro News November 28, 2008)

NOTICE OF PUBLIC HEARING

STREET IMPROVEMENT PROJECT NO. 60626

Notice is hereby given that there will be a special meeting of the City Council of the City of Topeka, Shawnee County, Kansas, held on December 16, 2008, at 6:00 P.M., in the Council Chamber 214 E. 8th, for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk, on all lots, parcels and pieces of ground liable for the cost of improvement, same being Street Improvement Project No. 60626, authorized by Resolution No. 7943, adopted and approved May 1, 2007.

GENERAL NATURE OF IMPROVEMENT:

To pave 29 feet in width from SW Wanamaker Road west approximately 772 feet known as SW 30th Terrace with asphaltic concrete pavement, curb and gutter, storm sewer and sidewalks. Included with the project is engineering and all other contingencies needed to complete the project.

IMPROVEMENT DISTRICT:

Wanamaker West Subdivision No. 2
Lots 1 through 4, Block B

Wanamaker West Subdivision No. 3
Lots 1 and 3, Block A

METHOD OF ASSESSMENT:

On a linear foot of frontage basis for all lots abutting the street which are included in the described improvement district.

TOTAL COST & APPORTIONMENT OF COSTS:

Final Costs = \$291,323.61
1,543.25 Front Footage = \$188.773 Cost Per Front Footage
100% paid by the Improvement District

All of above described territory being situated in the City of Topeka, Shawnee County, Kansas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City for Topeka to be affixed on November 21, 2008.



Brenda Younger
Brenda Younger
City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 26, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: Howard H Giles **DOCUMENT #:**
SECOND PARTY/SUBJECT: Fire Civil Service **PROJECT #:**
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 159 Charter
CIP PROJECT: No
ACTION OF COUNCIL: 05/13/08 Postponed for **JOURNAL #:** 08
six months. 11/18/08 First
Reading. 11/25/08
deferred to 12/16/08.

PAGE #:

DOCUMENT DESCRIPTION:

A CHARTER ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section A6-16 and Section A6-17, and repealing said original sections. Final Reading. (Deferred from the meeting of November 25, 2008.)

(Approval would clarify the civil service hiring process affected by City ordinances and repeal an ordinance requiring a Fire Promotion Board.)

POLICY ISSUE:

The repeal of the ordinance requiring a Fire Promotion Board is appropriate since there is a separate Promotion Board required by the fire contract which is applicable to bargaining unit members. This Charter Ordinance clarifies that Civil Service examinations will only be required of firefighter III applicants.

STAFF RECOMMENDATION:

Adopt the charter ordinance.

BACKGROUND:

This change provides a clarification to existing charter ordinance that effectively gives the fire chief, like other department heads, the responsibility and flexibility to manage their departments.

BUDGETARY IMPACT:

NONE

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

Item #17

(Published in the Topeka Metro New _____ and _____).

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § A6-16 and § A6-17, and repealing said original sections.

BE IT ORDERED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, THAT:

Section 1. That § A6-16, Civil service examination required, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Civil service examination required.

All new applicants for entry level firefighter positions in the fire department of the city shall be required to submit to a civil service examination for the position of third class fireman.

Section 2. That § A6-17, Promotion board, of the Code of the City of Topeka, Kansas, is hereby repealed:

~~Promotion board.~~

~~There is hereby created a promotion board which shall consist of five members of the department appointed by the chief of the department. Three members of such promotion board shall be appointed for terms of two years and two members shall be appointed for terms of three years. The chief of the department shall serve as ex officio chairman of said board.~~

Section 3. That original City of Topeka Code § A6-16 and § A6-17 are hereby specifically repealed.

Section 4. This Ordinance shall be published once each week for two (2) consecutive weeks in the official City newspaper.

32 PASSED AND APPROVED by the Council of the City of Topeka _____.

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39 William W. Bunten, Mayor

40 ATTEST:

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43
44

45 Brenda Younger, City Clerk

STATEMENT OF MANNER OF ADOPTION OF FOREGOING

The foregoing Charter Ordinance No. _____ was passed on the _____ day of _____, 2008, as shown by the minutes, Book _____ Page _____, by a vote of _____ for and _____ against, being not less than two-thirds (2/3) of the members-elect of the governing body, published in the Topeka Metro News, the official city newspaper, on the _____ day of _____, 2008, and on the _____ day of _____, 2008, being once each week for two (2) consecutive weeks, and there being no petition demanding a referendum filed with the City Clerk within sixty (60) days after the final publication, said Charter Ordinance took effect on the _____ day of _____, 2008.

Brenda Younger, City Clerk

CERTIFICATE

CITY OF TOPEKA)
COUNTY OF SHAWNEE) ss:
STATE OF KANSAS)

I, Brenda Younger, City Clerk of the City of Topeka, County of Shawnee, State of Kansas, do hereby certify that the above and foregoing, consisting of _____ typewritten pages, including the page upon which this Certificate is written, is a full true and correct copy of Charter Ordinance No. _____ of the said City of Topeka, that all acts and things required by Article 12, Section 5 of the Constitution of the State of Kansas were done and performed in the manner and within the time prescribed and that said Ordinance became effective on the _____ day of _____, 2008.

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 26, 2008

+ Back Print

DATE: December 16, 2008

CONTACT PERSON: Howard H Giles **DOCUMENT #:**

SECOND PARTY/SUBJECT: Fire and Police Selection **PROJECT #:**
Process

CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 106 Personnel

CIP PROJECT: No

ACTION OF COUNCIL: 5/13/08 postponed for six **JOURNAL #:** 08
months. 11/18/08 First
Reading. 11/25/08
deferred to 12/16/08.

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., repealing City of Topeka Code Sections 106-44, 106-46, 106-47, 106-49, 106-52, and 106-74 concerning police officers and firefighters civil service commission and classification and pay plan. **Final Reading.** *(Deferred from the meeting of November 25, 2008.)*

(Approval would amend City Code to clarify which positions in the Fire and Police Departments are subject to the Civil Service Commission and repeals the section relating to promotions.)

POLICY ISSUE:

This follows a previous ordinance change that allows the Police Chief the flexibility to determine the relevant criteria to consider in making promotions to the Police Lieutenant position. Likewise, this ordinance change will allow the Fire Chief such flexibility in determining the relevant criteria to consider in making promotions to the Fire Battalion Chief, Shift Commander, other Management positions and specialty positions when necessary. The selection process used to fill these positions would be approved by the City Manager.

STAFF RECOMMENDATION:

Adopt the ordinance.

BACKGROUND:

This follows action recently taken by the Council (to repeal ordinances) and will bring about consistency within the City's Police and Fire Departments. The changes effectively give the fire and police chiefs, like other department heads, the responsibility and flexibility to manage their departments.

BUDGETARY IMPACT:

NONE.

Item #18

SOURCE OF FUNDING:

n/a.

ATTACHMENTS:

[Ordinance](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 106-44, § 106-46, § 106-47, § 106-49, § 106-52, and § 106-74 concerning police officers and firefighters civil service commission and classification and pay plan, and specifically repealing said original section.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 106-44, Control of exams; nature of exams, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Control of exams; nature of exams.

The civil service commission shall control all examinations for entry level patrol officer or entry level firefighter. With advice from the police chief, fire chief, technical advisor and city attorney, or their respective designees, the commission shall provide uniform rules with respect thereto, and shall hold such examinations as are necessary for the purpose of determining the qualifications and fitness of applicants for entry level patrol officer or entry level firefighter positions on the police and fire departments. All such examinations shall be practical and shall fairly test the fitness of applicants to discharge the position to which they seek to be appointed. No questions shall relate to religious faith or party affiliations.

Section 2. That section 106-46, Notification of vacancies, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Notification of vacancies.

The chief of the fire department or the chief of the police department, whomever is applicable, shall immediately notify the chairperson of the civil service commission

whenever a vacancy exists in any department, when the vacant position is one ~~that may be filled by appointment only from the applicants examined by the civil service commission~~ for entry level patrol officer or entry level firefighter.

Section 3. That section 106-47, Certification of applicants, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Certification of applicants.

The civil service commission shall certify the names and addresses of eligible applicants to the fire chief or police chief, whichever is applicable, who shall make appointments only from such list so certified. Whenever the eligible list of the civil service commission contains fewer than double the number of applicants to fill the vacancy or vacancies existing, the ~~personnel division~~ human resources department shall advertise for applicants and the examination procedure shall commence as soon as practical thereafter. The civil service commission shall document why a candidate is or is not certified for entry level patrol officer or entry level firefighter. What documentation is required will be decided by the city attorney and the technical advisor. The ~~personnel~~ human resources director shall provide whatever support is appropriate to provide documentation.

Section 4. That section 106-49, Striking eligibles from list, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Striking eligibles from list.

The civil service commission may strike from the eligible list the names of all applicants for entry level patrol officer or entry level firefighter after they have remained thereon for more than one year and have failed to be appointed.

54 Section 5. That section 106-52, New applicants for police and fire positions to
55 submit to exam, of the Code of the City of Topeka, Kansas, is hereby amended to read
56 as follows:

57 **New applicants for police and fire positions to submit to exam.**

58 All new applicants for positions of entry level patrol officer or entry level firefighter
59 in the police department and fire department of the city shall be required to submit to a
60 civil service examination ~~for position of police officer or firefighter.~~ Nothing in this
61 section is intended to prohibit the fire chief or police chief or their designees from
62 advertising or selecting individuals to fill vacant management level positions from
63 applicants not currently employed by the City of Topeka.

64 Section 6. That section 106-74, Promotions, of the Code of the City of Topeka,
65 Kansas, is hereby repealed:

66 **Promotions.**

67 ~~(a) — Fire department. All promotions of fire department personnel covered by~~
68 ~~this article shall be in accordance with Charter Ordinance No. 10 (App. A, § A6-16 et~~
69 ~~seq.).~~

70 ~~(b) — Police department. All promotions of police department personnel~~
71 ~~covered by this article shall be in accordance with section 106-58.~~

72 Section 7. That City of Topeka Code § 106-44, § 106-46, § 106-47, § 106-49,
73 § 106-52, and § 106-74 are hereby specifically repealed.

74 Section 8. This ordinance shall take effect and be in force from and after its
75 passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 10, 2008

+ Back Print

DATE: December 16, 2008

CONTACT PERSON: Braxton B. Copley, **DOCUMENT #:**
Deputy City Attorney

SECOND PARTY/SUBJECT: Consolidated Rural Water **PROJECT #:**
District No. 1

CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous

CIP PROJECT: No

ACTION OF COUNCIL: 12/9/08 Deferred One **JOURNAL #:** 08
Week

PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Attorney's office to take all appropriate legal action necessary to collect monies owed by Consolidated Rural Water District No. 1 to the City of Topeka. *(Deferred from the meeting of December 9, 2008.)*

(Approval would direct and authorize the City's Legal Department to take all appropriate legal action to collect the \$400,000 owed by CRWD No. 1.)

POLICY ISSUE:

Whether or not Council should adopt resolution.

STAFF RECOMMENDATION:

Adopt the resolution.

BACKGROUND:

The City of Topeka combined water, wastewater, and stormwater utility incorrectly underbilled the CRWD #1 by more than \$400,000.00 from January 2005 to January 2008. Formal demand for payment was made but CRWD #1 has failed to pay the full amount or make satisfactory payments arrangements.

BUDGETARY IMPACT:

City will incur the costs and attorneys' fees estimated to be \$20,000

SOURCE OF FUNDING:

Legal Department's Budget

ATTACHMENTS:

Item #19

RESOLUTION NO. _____

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Attorney's office to take all appropriate legal action necessary to collect monies owed by Consolidated Rural Water District No. 1 to the City of Topeka.

WHEREAS, the City of Topeka has established water rates for its customers by ordinances passed and approved by the City Council; and

WHEREAS, the City of Topeka combined water, wastewater, and stormwater utility (the "Utility") relies on the full payment by its customers to be able to provide services at reasonable rates; and

WHEREAS, the Utility incorrectly billed Consolidated Rural Water District No .1 (the "District") over the three year period from January 2005 to January 2008; and

WHEREAS, the error by the Utility resulted in the District's underpayment of four hundred one thousand nine hundred fifty-nine dollars and eighty-six cents (\$401,959.86); and

WHEREAS, the Utility has made formal demand on District for payment of the full amount of four hundred one thousand nine hundred fifty-nine dollars and eighty-six cents (\$401,959.86) owed to the Utility; and

WHEREAS, the District has failed to pay said full amount or make satisfactory arrangements to do so; and

WHEREAS, K.S.A. 13-2412 prohibits discrimination among water users of like classes as to rates.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, that the City Attorney's office is hereby directed and authorized to

take all appropriate legal action, including filing suit, seeking injunctive or declaratory relief, seeking judgment, and appeal therefrom necessary to collect the amount due and owing to the Utility from the District and to protect the Utility's ability to bill and collect from other users in the same class of rate payers.

ADOPTED and APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 24, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: Eric Smith, Legal **DOCUMENT #:**
SECOND PARTY/SUBJECT: Faith Temple Church, Inc. **PROJECT #:**
CATEGORY/SUBCATEGORY 019 Reports / 009 Real Estate
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

APPROVAL of the real estate report and Real Property Purchase Agreement including the method of disposal between the City of Topeka and Faith Temple, Inc., for property located at 1155 SW Lincoln Street.

(Property has been approved for disposal by all City Departments and a request for authorization of City Manager to execute any and all documents or instruments to close the real estate transaction.)

POLICY ISSUE:

Should the City Council accept or reject the real estate report, procedures for disposal and purchase agreement.

STAFF RECOMMENDATION:

Approval of the real estate report and method of disposal as described within "m" of the accompanying real estate report. Approval of real estate agreement for donation of the one lot to the Faith Temple Church, Inc for use of such property solely for a public benefit. The use is for a public benefit.

BACKGROUND:

The city acquired and removed slums and blight within the Tennessee Town area.

BUDGETARY IMPACT:

Other than reduced land maintenance and upkeep costs there will be no impact on the City of Topeka.

SOURCE OF FUNDING:

None.

ATTACHMENTS:

[Plat Map of Lot](#)

[Real Estate Report](#)

[Agreement](#)

Item #20



HOUSING & NEIGHBORHOOD DEVELOPMENT REAL ESTATE REPORT

- a. **Common Address:** 1155 SW Lincoln St.
- b. **Legal Description:** Lot 399 on Lincoln Street, in KING'S ADDITION, to the City of Topeka, Shawnee County, Kansas.
- c. **Owner of Record:** City of Topeka, a Municipal Corporation
- d. **Current Zoning:** "M-1" Two Family Dwelling District
- e. **Acquisition Date:** January 15, 1988.
- Reason City Acquired:** Acquisition relocation demolition elimination of slums and blight program.
- f. **Previous Owner:** Cecil J. and Emma J. Coconougher, as husband and wife
- g. **How City Acquired:** Warranty Deed
- i. **Current Use:** A lot on north end of the King's Court recreational facility.
- j. **Expected Future Use:** Continued use as a basketball and recreational facility to the Tennessee Town neighborhood and community at large.
- k. **Appraised Value:** Vacant lot valuation by Shawnee County: \$430.00.
- l. **Additional Information:** This site shall be utilized by the Faith Temple Church Inc., for community recreational purposes. This site has a conditional use permit and use agreement in place.
- m. **Procedure for Disposal:** By transfer to the Faith Temple Church, Inc., by donation with the subject property being used solely for a public benefit.
- n. **Financial Impact:** Reduced land maintenance costs.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT made this _____ day of _____, 2008, between the City of Topeka, Kansas, a municipal corporation, hereinafter referred to as "Seller," and Faith Temple Church, Inc. hereinafter referred to as "Purchaser."

FOR GOOD AND VALUABLE CONSIDERATION, Seller and Purchaser agree as follows:

1. a. Seller agrees to sell and Purchaser agrees to buy the following described real estate located in Shawnee County, Kansas:

Legal Description:

Lot 399, Block 5, Kings addition to the City of Topeka, Shawnee County, Kansas.

(Commonly known as and described as 1155 SW Lincoln Avenue, Topeka, Kansas.)

b. Together with the appurtenances, permanent improvements and fixtures thereto belonging, including all of the following items, if any, now located upon the above described property: wall-to-wall carpeting, plumbing fixtures, all built-in appliances, garbage disposal, attached incinerators and trash compactors, built-in heating and cooling systems, boilers, elevator equipment, tools or equipment for any and all mechanical systems, fire extinguishers, attic fans, hot water heaters, towel racks, attached kitchen and bathroom cabinets, light fixtures, ceiling fans, linoleum, curtain rods, traverse drapery rods, window shades, venetian blinds, screens, screen doors, awnings, storm doors, storm windows, T.V. and F.M. antennae.

c. The foregoing legal description is subject to correction after obtaining survey of the subject property.

2. The total purchase price is one dollar (\$1.00), payable at closing.

3. Seller shall convey marketable title by Corporation Quit Claim Deed to be delivered to Purchaser at the closing of this Real Estate Purchase Agreement upon completion or waiver of all contingencies stated in this agreement, receipt of the total purchase price, free of all liens and encumbrances except:

a. Zoning, conditions, restrictions, deed restrictions, reservations, rights-of-way and easements of record, if any, which do not materially affect the value or prohibit the use of the property for a legal purpose;

- b. Encumbrances created by the Purchaser;
- c. Installments, if any, of special assessments not yet due; and
- d. A restriction that the Real Estate can only be used for the public purpose of recreation; and
- e. Other exceptions if any.

4. Taxes and Assessments due and payable for the calendar year 2007, and all prior years, and a pro rata share of the 2008, taxes and assessments as of date of closing, (based on 2007 general taxes and 2007 special assessments, if any) shall be paid by Seller, and all taxes and assessments that may be levied, imposed or become payable after the closing shall be assumed and paid by the Purchaser. The parties acknowledge that the taxes may be substantially higher or lower than the previous year's taxes due to Kansas law requiring periodic re-appraisal. Purchaser is aware the property is currently tax exempt.

5. Unless additional time is required to provide marketable title, this Real Estate Purchase Agreement shall be closed on or before the 16th day of January, 2009, with possession to be delivered to Purchaser on or before 5:00 PM, the 16th day of January, 2009.

6. Seller shall pay all contractors, subcontractors, laborers, materialmen or suppliers for all work done or material furnished to the above property prior to the closing of this Real Estate Purchase Agreement, which might form the basis of a mechanic's lien. Seller shall indemnify and hold Purchaser harmless from any obligation for payment of any amounts by reason of any mechanic's liens, which may be filed for labor performed, or material furnished prior to the closing of this Real Estate Purchase Agreement.

7. Time is of the essence of this Real Estate Purchase Agreement. In the event buyer fails to comply with any of the terms of this Real Estate Purchase Agreement, then this Real Estate Purchase Agreement shall, at the option of the Seller, become null and void, and all rights of Buyer hereunder shall then terminate, and all moneys paid and improvements made hereunder shall then be retained by Seller as rent and as liquidated damages for said default by Buyer. In such event, Seller shall be entitled to possession of said real estate free of all right, title and interest of the Buyer, and all parties shall then be released from all further liability hereunder. If Seller does not exercise this option to terminate this Real Estate Purchase Agreement, Seller may exercise any other legal rights and remedies available to Seller under Kansas Law. Notwithstanding any other terms of this Real Estate Purchase Agreement providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this Real Estate Purchase Agreement. Buyer and Seller agree that failure by either to respond in writing to a

certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this Real Estate Purchase Agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto.

8. During the period from the execution of this Agreement to closing, Seller agrees to make the subject property available for inspection to the Purchaser, its agents, inspectors, architects and engineers, including, but not limited to, mechanical, plumbing, electrical, and structural engineers and contractors, architects and design consultants. The foregoing inspections shall be made during normal business hours after reasonable advance notice. Seller shall not unreasonably withhold consent for inspections. Purchaser agrees to pay for any and all inspections, reports and analysis.

9. Purchaser has been allowed to make an inspection of the property and has knowledge as to the past use of the property. Based upon this inspection and knowledge, Purchaser is aware of the condition of the property and Purchaser is aware that Purchaser is purchasing the property on an "as-is with all faults" basis with any and all patent and latent defects, including those relating to the environmental condition of the property, and that Purchaser is not relying on any representation or warranties, express or implied, of any kind whatsoever from Seller as to any matters concerning the property, including the physical condition of the property and any defects thereof, the presence of any hazardous substances, wastes or contaminants in, on or under the property, the condition or existence of any of the above ground or underground structures or improvements in, of or under the property, the condition of title to the property, and the leases, easements or other agreements affecting the property. Purchaser is aware of the risk that hazardous substances and contaminants may be present on the property, and indemnifies, holds harmless and hereby waives, releases and discharges forever, Seller from any present or future claims or demands, and any and all damages, loss, injury, liability, claims or costs, including fines, penalties and judgments, and attorney's fees, arising from or in any way related to the condition of the property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any hazardous substances or contaminants in, on or under the property, (the "environmental condition") whether such environmental condition or such events giving rise to the environmental condition was due to the sole or concurrent negligence or strict liability of seller or purchaser. Losses shall include without limitation (A) the cost of any investigation, removal, remedial or other response action that is required by any environmental law, that is required by judicial order or by order of or agreement with any governmental purchaser, or that is necessary or otherwise is reasonable under the circumstances, (B) capital expenditures necessary to cause the seller remaining property or the operations or business of the seller on its remaining property to be in compliance with the requirements of any environmental law, (C) losses for injury or death of any person, and (D) losses arising under any environmental law enacted after transfer. The rights of seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of

Purchaser to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any hazardous substances or contaminants on the property. Provided, however, that Purchaser's obligation to indemnify Seller shall exclude: (1) Personal injury claims by third parties which arise solely from exposure or alleged exposure on the property prior to closing date; and (2) claims by third party for property damage arising solely from migration of hazardous substances from the property prior to closing date. Purchaser shall further indemnify Seller to the extent that such third party claims are made against Seller and Seller's liability for cleanup is increased because of the Purchaser's development and use of the property. Purchaser covenants not to pursue or prosecute any claims Purchaser may have or which may arise in the future for the condition of environmental condition of the property or any such event giving rise to the condition or environmental condition of the property.

The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation, petroleum oil and any of its fractions.

10. Purchaser may obtain, at its own cost, a Phase I Environmental Site Assessment by the company of Purchaser's choosing. A complete copy of said report shall be provided to Seller. In the event the Phase 1 Environmental Site Assessment recommends a Phase 2 Environmental Site Assessment, the Seller may cancel this Real Estate Purchase Agreement or may obtain, at its own cost Phase 2 Environmental Site Assessment. Both parties shall be provided with the recommended actions, including the results of any and all soil tests, core samples, soil analysis, with a complete copy of the report and analysis provided to both parties. Furthermore, if any contamination at a level requiring remediation is located on said premises and Seller considers it to be cost prohibitive to remediate, Seller or Purchaser may elect to cancel this Real Estate Purchase Agreement with notice in writing to the other party and said Real Estate Purchase Agreement shall be of no further force or effect.

11. Purchaser is authorized to order a survey by a licensed surveyor of its choosing (such report to be paid for by Purchaser). If encroachments are found which affect marketable title, Purchaser may have the option of taking property "as is" or canceling this Real Estate Purchase Agreement, provided, however, Seller may elect to keep this Real Estate Purchase Agreement in force by paying for the cost of correcting the defect. In the event this Real Estate Purchase Agreement is canceled, all parties to this Real Estate Purchase Agreement shall be released from further liability hereunder.

12. If the Seller or the Purchaser exercises any right to cancel this Real Estate Purchase Agreement for any reason, and the parties hereto are not in default, all parties shall be released from all liability under the Real Estate Purchase Agreement. Furthermore, if the Seller or Purchaser fails to comply with any of the terms of this Real Estate Purchase Agreement, the other party may, at its option, (1) waive such non-compliance; (2) require specific performance of any or all terms of this Real Estate Purchase Agreement; or (3) cancel this Real Estate Purchase Agreement by written notice to the other party.

13. NOTICES. All notices required or permitted under this Real Estate Purchase Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for Seller:
Brenda Younger, City Clerk
City of Topeka
215 SE 7th Street
Topeka, Kansas 66603

If for Purchaser:
Faith Temple Church, Inc.
1162 SW Lincoln Avenue
Topeka, KS 66604

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

14. ENTIRE AGREEMENT. This Real Estate Purchase Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Real Estate Purchase Agreement supersedes any prior written or oral agreements between the parties.

15. AMENDMENT. This Real Estate Purchase Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

16. SEVERABILITY. If any provision of this Real Estate Purchase Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Real Estate Purchase Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

17. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Real Estate Purchase Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict

compliance with every provision of this Real Estate Purchase Agreement.

18. **AUTHORITY TO EXECUTE.** By signing this Agreement, Purchaser's representative thereby represents that he or she is duly authorized by the organization to execute this Agreement on behalf of Purchaser and that Purchaser agrees to be bound by the provisions of this Agreement.

19. **APPLICABLE LAW.** The laws of the State of Kansas shall govern this Real Estate Purchase Agreement.

THIS IS A LEGALLY BINDING REAL ESTATE PURCHASE AGREEMENT. IF NOT UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY.

IN WITNESS WHEREOF, the parties have executed this Real Estate Purchase Agreement as of the day and year last signed.

SELLER
CITY OF TOPEKA

Norton N. Bonaparte Jr., City Manager

ATTEST:

APPROVED AS TO FORM AND LEGALITY DATE _____ BY _____

Brenda Younger, City Clerk

PURCHASER
FAITH TEMPLE CHURCH, INC.

(Print Name and Title)



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www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 18, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: Councilmember John Alcala **DOCUMENT #:**
SECOND PARTY/SUBJECT: Rochester Cemetery **PROJECT #:**
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember John Alcala, requesting the City of Topeka to provide financial assistance in the amount of \$60,000 for maintenance of Rochester Cemetery. (Council District No. 2)

(Approval would provide funds to assist with the maintenance costs of the cemetery.)

POLICY ISSUE:

Whether or not the City of Topeka provides \$60,000 to Rochester Cemetery for maintenance purposes.

STAFF RECOMMENDATION:

BACKGROUND:

The Rochester Cemetery Association's October 31, 2008 Treasurer's Report indicates that there was less than \$2,000 in legally accessible funds remaining in its combined money market and checking accounts. Further depletion of cemetery funds is expected to occur for the remainder of 2008 and in 2009. The \$60,000 grant is to be used for cemetery maintenance purposes.

BUDGETARY IMPACT:

\$60,000 for maintenance purposes.

SOURCE OF FUNDING:

2008 General Fund or any other legal source.

ATTACHMENTS:

[Rochester Cemetery Association Treasurer's Report](#)
[Resolution](#)

Item #21

ROCHESTER CEMETERY ASSOCIATION			
TREASURER'S REPORT			
OCTOBER 31, 2008			
	BALANCE	OCTOBER	BALANCE
	9/30/08	ACTION	10/31/08
KVB Operating-Checking	\$ 287.09	\$ (60.76)	\$ 226.33
CD:			
Silver Lake Bank (Matures 11/10/08)	50,000.00		50,000.00
KVB Money Market-Savings	2,343.90	(1,330.98)	1,012.92
KVB Preneed O/C CD's	100,492.56	(1,106.60)	99,385.96
KVB Perpetual Care Fund	112,328.40		112,328.40
Total Checking, CD's and Savings	\$ 265,451.95		\$ 262,953.61
Stock Owned:			
25 shares Westar Energy	\$ 2,500.00		
MONEY MARKET ACCOUNT			
OCTOBER 31, 2008			
Beginning balance 10/1/08			\$ (1,990.96)
Receipts:			
October Interest			\$ 2.77
Disbursements:			
Transfer to Operating			1,800.00
Balance 10/31/08			\$ (3,788.19)
Columbarium Balance 10/1/08			\$ 2,808.82
Receipts:			
Disbursements:			
Balance Columbarium 10/31/08			\$ 2,808.82
Rental House 10/1/08			\$1,526.04
Receipts:			
October rent			500.00
Disbursements:			
Roach Hardware			33.75
Balance rental house 10/31/08			\$1,992.29
Balance Money Market Savings 10/31/08			\$ 1,012.92

ROCHESTER CEMETERY ASSOCIATION			
Account status as of October 31, 2008			
Balance as of January 1, 2008		\$ 5,886.54	
	October	YTD Totals	
Balance October 1, 2008	\$ 287.09		
Property	\$ -	\$ 10,755.00	
Setups & Footings	200.00	1,980.00	
Opening & Closing	2,706.60	26,839.38	
Preneed Opening & Closing	-	5,200.00	
Boxes & Vaults	1,050.00	11,595.00	
Dividends	-	84.39	
Pet Burials	-	700.00	
House Rent	-	500.00	
Interest-Bank	0.33	22.79	
Interest-Perpetual Care	28.13	4,667.41	
Miscellaneous	50.00	573.96	
Transfer from Money Market	1,800.00	32,679.26	
Hiller-Pay Hold	-	3,000.00	
Commission	-	-	
Total Receipts	\$ 5,835.06	\$ 98,597.19	
Vaults	\$ -	\$ 6,348.44	
Utilities	236.47	2,653.50	
Advertising	84.00	661.00	
Maintenance	327.40	4,578.80	
Gas & Oil	665.51	3,023.10	
Employee Payroll Taxes	572.83	7,281.28	
Employer Payroll Taxes	334.77	3,573.09	
Net Salaries	2,378.49	29,909.96	
Perpetual Care	-	2,220.75	
Office Supplies	-	228.28	
Shirts & Cleaning	116.00	1,252.79	
Postage	-	124.00	
Safe Deposit Box Rent	-	27.00	
Commercial Insurance	-	1,522.47	
Military Marker Pads	743.82	743.82	
Hiller-Mileage	40.00	400.00	
Hiller-Pay Hold	-	3,000.00	
Work Comp Insurance	-	586.00	
Expenses-Rental House	-	22,011.79	
Dig graves	390.00	4,230.00	
Real Estate/Pers Prop Taxes	-	-	
Miscellaneous	-	245.00	
Equipment	-	335.23	
Equipment Repair	-	2,347.58	
Building Repair	-	1,683.73	
Bank Charge	6.53	69.79	
Preneed Opening & Closing	-	5,200.00	
Total Expenditures	\$ 5,895.82	\$ 104,257.40	
Balance as of October 31, 2008	\$ 226.33	\$ 226.33	

RESOLUTION NO. _____

A RESOLUTION introduced by Councilmember John Alcala, requesting the City of Topeka to provide financial assistance in the amount of \$60,000 for maintenance of Rochester Cemetery.

WHEREAS, the Rochester Cemetery Association Board of Directors have been challenged for some time with the task of stretching limited resources to pay for maintenance of the still active cemetery grounds. Rising maintenance costs have adversely affected the Board's ability to provide needed road repairs, damaged tree removal, replacement and repair of aging equipment, and similar expenses; and

WHEREAS, the Rochester Cemetery Association had less than \$2,000 in legally accessible funds remaining in its combined money market and checking accounts as of October 31, 2008 (Rochester Cemetery Association Treasurer's Report, Exhibit A attached). Further depletion of cemetery funds is expected to occur for the remainder of 2008 and in 2009; and

WHEREAS, the City of Topeka has some direct responsibility to provide funding to the Rochester Cemetery Association for cemetery maintenance purposes.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Topeka that the City Council finds it is necessary for the City of Topeka to grant financial assistance in the amount of \$60,000 (sixty thousand dollars) to the Rochester Cemetery Association for the purpose of maintaining the cemetery for the remainder of 2008 and in 2009.

BE IT FURTHER RESOLVED by the Council of the City of Topeka that the City Council requests the City Manager to prepare and execute an Agreement granting the

COUNRES
ROCHESTER CEMETERY
12/1/08

26 Rochester Cemetery Association \$60,000 (sixty thousand dollars) for cemetery
27 maintenance expenses for 2008 and 2009. Funding will be from the City's 2008
28 General Fund or from any other legal source.

29 ADOPTED and APPROVED by the City Council _____.

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William W. Bunten, Mayor

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38

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 26, 2008

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DATE: December 16, 2008
CONTACT PERSON: Joe Singer
SECOND PARTY/SUBJECT: Entire Corporate Limits and Boundaries of the City
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8024. *(All Council Districts)*

(Approval would adopt the entire corporate boundary of the City of Topeka.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Approve the Resolution as presented.

BACKGROUND:

There have been 2 annexations to the City of Topeka in 2008, which have added a net 0.068 square miles of territory. The two areas are: a tract at the northwest corner of SW 53rd and Wanamaker and in Misty Harbor Estates No. 4.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

None

ATTACHMENTS:

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8024.

WHEREAS, K.S.A. 12-517 provides that municipalities shall by resolution declare the entire boundaries of the municipality.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Topeka, Kansas, that it hereby declares the following to be the entire boundary of the City:

A. Corporate Limits and Boundaries as Follows to Wit:

Beginning at the Northwest corner of the Northeast Quarter of Section 3, Township 12 south, Range 16 east of the 6th P.M.; thence easterly on the North line of said Section 3 to the West line of England Mobile Home Estates Subdivision extended north; thence southerly on said extension to the Northwest corner of Lot 1, Block "A" in said subdivision; thence easterly, 991.90 feet, to the Northeast corner of Lot 2, Block "A" in said subdivision; thence southerly, on the East line of said Lot 2, 477.03 feet; thence easterly, to a point which is 527.03 feet south of and 12.5 feet west of the Northeast corner of the Northeast quarter of said Section 3; thence on an assumed bearing of South 00°21'23" East, parallel with the East line of said Northeast Quarter, 1248.45 feet; thence South 88°38'12" West, 40 feet; thence southerly, on a line which is 52.50 feet west of the East line of the last said Northeast Quarter, 535.29 feet; thence easterly 2.50 feet; thence southerly, on the East line of the last said Lot 1, and its extension, 360.00 feet, to an intersection with the South line of the Northeast Quarter of Section 3, Township 12 south, Range 16 east; thence South 88°38'15" West, 25.89 feet; thence South 09°10'00" West, 156.20 feet; thence South 50°49'00" West, 907.50 feet; thence South 74°51'00" West, 547.39 feet to the East line of the West Half of the Southeast Quarter of said Section 3; thence southerly on said East line to the South Right-of-Way Line of U.S. Highway 40 as condemned in Case Number 91169; thence northeasterly on said South Right-of-Way Line and on a curve to the left that has a radius of 3969.83 feet, an arc distance of 443.15 feet; thence on an assumed bearing of North 83°34'24" East, on said South Right-of-Way Line, 820.00 feet to a point 80.00 feet west of the East line of said Southeast Quarter; thence south-southeasterly, 325.00 feet to a point that is 10.00 feet east of the Northeast corner of Lot 1, Altair Heights Subdivision; thence westerly 10.00 feet to the Northeast corner of Lot 1, Altair Heights Subdivision, being a point on the West Right-of-Way Line of Croco Road; thence southerly on the West line of Croco Road on an assumed bearing of South 02°34'12"

West, 222.94 feet; thence west 300.00 feet; thence south 587.42 feet; thence South 32°26'30" West, 203.21 feet; thence South 61°42'24" West, 671.80 feet; thence South 74°32'18" West, 89.94 feet; thence South 88°25'06" West, 194.71 feet, to a point 30.00 feet north of the Southeast corner of the West Half of the Southeast Quarter of Section 3; thence south to the Northeast corner of the West Half of the Northeast Quarter of Section 10, Township 12 south, Range 16 east of the 6th P.M.; thence on an assumed bearing of South 00°48'00" West, on the East line of the West Half of the Northeast Quarter of said Section 10, 158.83 feet to the North line of the Kansas Turnpike Right-of-Way; thence South 63°15'40" West, on said right-of-way line, 790.86 feet; thence South 69°36'00" West, continuing on said right-of-way line, 452.77 feet; thence North 70°46'40" West, continuing on said right-of-way line, 337.69 feet to the Easterly Right-of-Way Line of Service Road "L" of the Kansas Turnpike Authority; thence southwesterly to the intersection of the Westerly Right-of-Way Line of Service Road "L" of the Kansas Turnpike Authority, and the Northerly Right-of-Way line of the Kansas Turnpike; thence southwesterly approximately 290 feet on the Northerly Right-of-Way line of the Kansas Turnpike to a point which intersects with a line bearing North 27°15'56" West, extended from the most Northerly corner of Lot 24, Block "N", Aquarian Acres Subdivision; thence South 27°15'56" East, 300 feet, more or less, to said most Northerly corner of Lot 24; thence easterly on the Southerly Right-of-Way Line of the Kansas Turnpike to its intersection with the East line of the West Half of Section 10, also being the Northeast corner of Aquarian Acres Subdivision; thence on an assumed bearing of North 62°16'17" East, on the north line of Capricorn Woods Subdivision No. 2, 308.09 feet, to the North corner of Lot 11, Block 'C' in said subdivision; thence North 08°05'50" West, on the West line of Capricorn Woods Subdivision No. 3, a record distance of 462.28 feet to the most westerly West corner of Lot 11, Block A in said subdivision; thence North 51°49'07" East, on a North line of Capricorn Woods Subdivision No. 3, 399.13 feet; thence North 64°31'42" East, on a North line of Capricorn Woods Subdivision No. 3, a record distance of 896.71 feet to a point on the East line of the West Half of the Northeast Quarter of Section 10, Township 12 South, Range 16 east of the 6th P.M.; thence South 00°19'45" West, on an East line of Capricorn Woods Subdivision No.3, 728.46 feet to the Northwest corner of Lot 1, Block "AA" in Shawnee Gardens Subdivision; thence North 89°29'35" East, 1283.60 feet, to the Northeast corner of Lot 6, Block "B" in said subdivision; thence easterly, on the North line of Shawnee Gardens Subdivision, to an intersection with a line which is 30 feet west of the East line of the Northeast Quarter of Section 10, Township 12 South, Range 16 east of the 6th P.M.; thence on an assumed bearing of North 00°29'01" East, parallel with the East line of said Northeast Quarter, to an intersection with a line which is an extension of the South line of the North 792.0 feet of the Northwest Quarter of Section 11, Township 12 South, Range 16 east of the 6th P.M.; thence

North 89°47'56" East, parallel with the North line of said Northwest Quarter, 1356.93 feet, to a point which is 6.99 feet west of the East line of the Northwest Quarter of the Northwest Quarter of said Section 11; thence South 00°27'04" West, 537.79 feet, to a point on the South line of the Northwest Quarter of the Northwest Quarter of said Section 11, which is 5.50 feet west of the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 11; thence South 89°58'08" West, on the South line of the Northwest Quarter of the Northwest Quarter of said Section 11, 1287.20 feet, to the Northwest corner of Lot 1, Block 'E' in Belhaze Subdivision No. 2; thence southerly, to the Northwest corner of Lot 8, Block 'D' in Belhaze Subdivision No. 2; thence westerly, to the Northeast corner of Lot 1, Block "D" in Shawnee Gardens Subdivision; thence on an assumed bearing of South 00°15'33" West, parallel with the East line of the Northeast Quarter of Section 10, Township 12 South, Range 16 east of the 6th P.M., to the Southeast corner of Lot 4, Block "D" in Shawnee Gardens Subdivision; thence North 89°44'27" West, 275.00 feet, to an East corner of Lot 15, Block "D" in said subdivision; thence South 00°15'33" West, 215.00 feet, to the most Easterly Southeast corner of Lot 16, Block "D" in said subdivision; thence South 89°44'27" East, 275.00 feet to the Northeast corner of Lot 27, Block "D" in said subdivision; thence South 00°15'33" West, 362.57 feet to the Southeast corner of Lot 12, Block "E" in said subdivision; thence North 89°26'55" East, on the North line of the Southeast Quarter of Section 10, to an intersection with a line which is 30 feet west of the East line of said Southeast quarter; thence southerly on the West line of Croco Road, 1432.51 feet; thence south on said West line of Croco Road 1176.40 feet to the North Right-of-Way Line of S.E. 29th Street; thence westerly on the North Right-of-Way Line of 29th Street to the East Right-of-Way Line of Wittenberg Road; thence northerly on the East Right-of-Way Line of Wittenberg Road to a point 1689.93 feet north of the South line of Section 10, Township 12 south, Range 16 east of the 6th P.M.; thence westerly parallel with and 1689.93 feet north of the South line of said Section 10 to the West line of Section 10; thence northerly on the West line of Section 10 to its intersection with the North Right-of-Way Line of the Kansas Turnpike; thence southwesterly on the Northerly Right-of-Way Line of the Kansas Turnpike to its intersection with the East line of the West Half of the West Half of Section 16, Township 12 South, Range 16 east of the 6th P.M.; thence south to the Northeast corner of the West Half of the Southwest Quarter of said Section 16; thence easterly, on the North line of said Southwest Quarter, 1324.26 feet, to the Northeast corner of said Southwest Quarter; thence on an assumed bearing of 00°05'54" East on the West line of the Northeast Quarter of said Section 16, 1771.63 feet to an intersection with the Southeast right of way line of United States Interstate Highway 470/335, also known as Kansas Turnpike Tract No. 27-70; thence on said Southeast right of way line, being a curve concave northwesterly, having a radius measure of 5879.58 feet and an arc length of 1005.83 feet, the chord of which bears North 45°01'09" East, 1004.60 feet; thence North 40°07'06"

East on said Southeast right of way line, 5.75 feet to the Southwest corner of Kansas Turnpike Tract 27-20E; thence North 84°56'53" East on the South line of said Turnpike Tract 27-20E, 524.39 feet; thence North 60°49'13" East on a South line of said Turnpike Tract 27-20E, 80.71 feet to an intersection with the South right of way line of SE 29th Street; thence South 89°28'02" East on the South right of way line of SE 29th Street, being 50.00 feet south of the North line of the West Half of said Northeast Quarter, 28.16 feet to a point on the East line of said West Half; thence South 00°15'13" West on the East line of said West Half, to a point on a line which is 300.00 feet south of the North line of the Northeast Quarter of Section 16; thence easterly, parallel with the North line of said Northeast Quarter, to the Southwest corner of Franklin Subdivision; thence northerly on the West line of said subdivision to the Northwest corner of Lot 1, Block A in Franklin Subdivision; thence easterly, to the Northeast corner of Lot 9, Block "J" in Shawnee Estates Subdivision; thence southerly, on the East line of Lot 9, to an intersection with a line which is 50 feet south of the North line of the Northeast Quarter of said Section 16, said line being the South line of Southeast 29th Street; thence easterly, parallel with the North line of said Northeast Quarter, to an intersection with a line which is 20 feet west of the East line of said Northeast Quarter, said line being the West line of West Edge Road; thence southerly, parallel with the East line of said Northeast Quarter, to an intersection with the North line of Lakeview Subdivision; thence westerly, on the North line of Lakeview Subdivision, to the Northeast corner of Lot 1 in said subdivision; thence southerly, to the Southeast corner of Lot 28 in Lakeview Subdivision; thence easterly, to an intersection with a line which is 20 feet west of the East line of the Northeast Quarter of said Section 16, said line also being the West line of West Edge Road; thence southerly, parallel with the East line of said Northeast Quarter, to an intersection with the South line of said Northeast Quarter; thence westerly, on the South line of said Northeast Quarter, to the Northeast corner of Lot 9, Block "D" in Lake Shawnee Subdivision "C"; thence southerly to the Southeast corner of Lot 19, Block "H" in Lake Shawnee Subdivision "C"; thence westerly, on the North line of S.E. 35th Street Terrace, and its extension, to an intersection with the West line of Shoreline Drive; thence southerly on the West line of Shoreline Drive to the North line of S.E. 37th Street; thence westerly, on a line which is 40.00 feet north of the South line of said Section 16, to an intersection with the East line of the West Half of the West Half of said Section 16; thence southerly, on said East line a distance of 40.00 feet to the South line of Section 16; thence continuing southerly on the East line of the West Half of the West Half of Section 21, Township 12 south, Range 16 east of the 6th P.M. to a point 1650.00 feet south of the North line of said Section 21; thence west 1320.00 feet to an intersection with the East line of the Northeast Quarter of Section 20; thence on an assumed bearing of South 01°40'19" West, on the East line of said Northeast Quarter, to a point 660.00 feet north of the Southeast corner of said Northeast Quarter; thence South 88°21'14" West, 1648.96 feet; thence

North 01°40'19" West 661.21 feet; thence South 88°21'35" West, on the South line of the North Half of the Northeast Quarter of said Section 20, to the Northeast corner of the Southeast Quarter of the Northwest Quarter of said Section 20; thence southerly, 1320.35 feet, to the Northeast corner of the Southwest Quarter of Section 20, Township 12 South, Range 16 east of the 6th P.M.; thence on an assumed bearing of North 88°21'37" East, 2186.81 feet, to the Southwest corner of Lot 1, Block 'A' KPL Substation Subdivision; thence northerly, to the Northwest corner of said Lot 1; thence easterly, to the Northeast corner of Lot 1; thence southerly, to the Southeast corner of Lot 1; thence North 88°21'37" East, on the South line of KPL Substation Subdivision, to the Northeast corner of the Southeast Quarter of Section 20, said point also being the Northwest corner of the Southwest Quarter of Section 21, Township 12 South, Range 16 east of the 6th P.M.; thence easterly on the North line of said Southwest Quarter, 275.30 feet; thence southerly, on a line which is 275.30 feet east of the West line of said Section 21, 516.00 feet; thence west 8.90 feet; thence southerly, on a line which is 266.40 feet east of the West line of Section 21, 553.00 feet; thence easterly 75.40 feet; thence southerly on a line which is 341.80 feet east of the West line of Section 21, 216.50 feet; thence westerly on the North line of the South Half of the Southwest Quarter of Section 21, Township 12 South, Range 16 east of the 6th P.M., to a point on a line which is 30 feet east of the West line of the Southwest Quarter of Section 21, ; thence southerly, parallel with the West line of said South Half, 210.00 feet; thence easterly on a north line of Stone Crest Subdivision, to the Northwest corner of Lot 4, Block 'E' in Stone Crest Subdivision; thence northerly to the Northwest corner of Lot 22, Block 'E' in Stone Crest Subdivision; thence easterly on the North line of the South Half of the Southwest Quarter of said Section 21, to the East corner of Lot 9, Block 'H' in Stone Crest Subdivision; thence southerly on the East line of the South Half of the Southwest Quarter of said Section 21, to the Southeast corner of Lot 1, Block 'I' in Stone Crest Subdivision; thence westerly on the North line of S.E. 45th Street and its extension, to the Southwest corner of Lot 9, Block 'D' in Stone Crest Subdivision; thence northerly at a right angle to the Northwest corner of Lot 4, Block 'D' in Stone Crest Subdivision; thence westerly parallel with the South line of the Southwest Quarter of said Section 21, to a corner of Stone Crest Subdivision on the East line of Lot 8, Block 'C' in said subdivision; thence southerly on the East line of Block 'C' and its extension, in Stone Crest Subdivision, to an intersection with a line which is 50 feet south of the North line of the Northwest Quarter of Section 28, Township 12 South, Range 16 east of the 6th P.M.; thence westerly parallel with the North line of the Northwest Quarter of said Section 28, to an intersection with a line which is 50 feet west of the East line of the Northeast Quarter of Section 29, Township 12 South, Range 16 east of the 6th P.M.; thence southerly parallel with the East line of said Section 29, to the South line of Marlatte Center Subdivision; thence westerly to the Southwest corner of said subdivision; thence northerly, on the Westerly line of said subdivision and its extension,

to an intersection with a line which is 45 feet north of the North line of Section 29; thence westerly parallel with the South line of Section 20, to the West line of the East Half of said Section 20; thence southerly, 5.00 feet, to a point 40.00 feet north of the Southeast corner of the Southwest Quarter of said Section 20; thence westerly parallel with and 40.00 feet north of the South line of the Southwest Quarter of Section 20, to the East line of Section 19; thence continuing westerly to a point 30.00 feet west of the East line of Section 19, also being the West line of Adams Street; thence westerly parallel with and 40.00 feet north of the South line of Section 19, to a point that is 40.00 feet north of the Northeast corner of the West Half of the Northeast Quarter of Section 30, Township 12 South, Range 16 east of the 6th P.M.; thence southerly 2694.79 feet on the East line of South Village Subdivision, to the Southeast corner of said subdivision; thence westerly, on the South line of said subdivision to the Northeast corner of the Southwest Quarter of Section 30, Township 12 South, Range 16 east of the 6th P.M.; thence southerly on an assumed bearing of South 02°24'27" East, on the East line of said Southwest Quarter, to a point which is 44.20 feet north of the Southeast corner of Terra Heights Subdivision, said point also being on the Southwesterly line of the right of way of the former Missouri Pacific Railroad Company; thence South 56°03'19" East on the Southwesterly line of said right of way, 1304.94 feet; thence southeasterly, southerly and southwesterly on said right of way line, on a curve concave westerly having a radius measure of 419.28 feet and an arc length of 1020.97 feet, the chord of which bears South 20°32'28" West, 786.78 feet; thence South 88°10'41" West on said right of way line, 132.83 feet; thence westerly on said right of way line, on a curve concave southerly having a radius measure of 613.69 feet and an arc length of 207.93 feet, the chord of which bears South 78°26'03" West, 206.93 feet, to a point on a line which is 45 feet north of the South line of said Southeast Quarter; thence South 88°10'41" West parallel with the South line of said Southeast Quarter, 407.12 feet; thence South 88°35'12" West on a line which is 45 feet north of the South line of said Southwest Quarter, 2224.75 feet to a point on the East line of Topeka Boulevard; thence North 02°07'29" West on the East line of Topeka Boulevard, 602.47 feet; thence North 01°34'34" West on the East line of Topeka Boulevard, 878.59 feet; thence northerly on the East line of Topeka Boulevard, to an intersection with the North line of the Southwest Quarter of said Section 30; thence westerly, on the South line of the Northwest Quarter of Section 30 to the Southeast corner of the Northeast Quarter of Section 25, Township 12 South, Range 15 east of the 6th P.M.; thence northerly, on the East line of said Northeast Quarter, 20.00 feet, to the North line of S.W. 49th Street, extended from the west; thence westerly, on a line which is 20.00 feet north of the South line of the Northeast Quarter of said Section 25, to an intersection with the West line of the right of way of the Burlington Northern Santa Fe Railway Company; thence southerly, on the West line of said right of way, to the Northeast corner of Lot 1, Block "A" in Laird Noller Subdivision; thence westerly, to the

Northwest corner of said Lot 1; thence southerly, to the Southwest corner of said Lot 1; thence westerly, 33.00 feet, to a corner of Lot 1, Block "A" in S.W. 57th Street Distribution Center Subdivision; thence southerly on the most westerly East line of the last said Lot 1, and its extension, to an intersection with a line which is 30 feet south of the North line of the Southeast Quarter of said Section 36; thence westerly, on an assumed bearing of South 88°03'15" West, parallel with the North line of the Southeast Quarter of said Section 36, to an intersection with a line which is 40 feet west of the East line of the Northwest Quarter of the Southeast Quarter of said Section 36; thence southerly, parallel with the East line of the Northwest Quarter of the Southeast Quarter of said Section 36, to an intersection with a line which is 50 feet south of the North line of said Southeast Quarter; thence South 88°03'15" West, 280.00 feet; thence southerly, parallel with the East line of the Northwest Quarter of the Southeast Quarter of said Section 36, to an intersection with a line which is 60 feet south of the North line of said Southeast Quarter; thence South 88°03'15" West, to a point which is 535.10 feet east of the Northwest corner of the Southeast Quarter of said Section 36, and 60.00 feet south of the North line of said Southeast Quarter, as measured on the North line of, and normal from the North line of said Southeast Quarter; thence South 76°44'39" West, 101.98 feet; thence South 88°03'15" West, 400.00 feet; thence South 61°29'21" West, 55.90 feet; thence South 88°03'13" West, 1535.10 feet; thence North 87°38'30" West, 199.78 feet; thence North 01°56'47" West, normal to the North line of the Southwest Quarter of said Section 36, 90.00 feet, to an intersection with said North line at a point which is 893.59 feet east of the Northwest corner of said Southwest Quarter; thence continuing North 01°56'47" West, 90.00 feet; thence South 88°03'13" West, parallel with the South line of the Northwest Quarter of said Section 36, 358.12 feet; thence North 07°53'08" East, 679.72 feet; thence North 23°43'11" East, 509.21 feet; thence North 14°17'25" East, 517.29 feet; thence North 00°04'32" West, 210.05 feet; thence northerly, on a curve which is concave westerly, having a radius measure of 5889.58 feet and an arc length of 719.40 feet, the chord of which bears North 06°17'43" East, 718.95 feet, to an intersection with the South line of the Southwest Quarter of said Section 25; thence northerly, on a curve which is concave westerly, having a radius measure of 5889.58 feet and an arc length of 547.79 feet, the chord of which bears North 00°16'44" West, 547.59 feet; thence North 01°48'09" West, 1517.06 feet; thence North 02°03'30" East, 514.28 feet; thence North 01°48'02" West, normal to the South line of the Northwest Quarter of said Section 25, 80.00 feet, to an intersection with said South line at a point which is 1149.74 feet east of the Southwest corner of said Northwest Quarter; thence continuing North 01°48'02" West, to an intersection with a line which is 20 feet north of the South line of the Northwest Quarter of said Section 25; thence westerly, on a line which is 20 feet north of the South line of the Northwest Quarter of said Section 25, to

317 an intersection with the East line of Section 26, Township 12 South, Range
318 15 east of the 6th P.M.; thence continuing westerly, parallel with and 20.00
319 feet north of the South line of the North Half of said Section 26 to the East
320 line of Burlingame Road; thence northerly on the East line of Burlingame
321 Road to an intersection with the North line of S.W. 45th Street, extended
322 from the west, said North line of S.W. 45th Street being 30.00 feet north of
323 the South line of Section 23, Township 12 South, Range 15 east of the 6th
324 P.M.; thence westerly, parallel with and 30.00 feet north of the South line of
325 said Section 23 to an intersection with the West line of the East Half of the
326 Southeast Quarter of Section 23; thence northerly on the West line of the
327 East Half of the Southeast Quarter of Section 23, to an intersection with the
328 North line of the Southeast Quarter of said Section 23; thence westerly, on
329 the North line of said Southeast Quarter, to the Northeast corner of the
330 Southwest Quarter of Section 23, Township 12 South, Range 15 east of the
331 6th P.M.; thence on an assumed bearing of South 87°44'36" West, on the
332 North line of said Southwest Quarter, to the Northeast Quarter of Lot 4,
333 Block 'B' in Misty Harbor Estates No. 2 Subdivision; thence South 08°11'25"
334 West, 149.95 feet; thence on a curve concave southerly, having a radius
335 measure of 537.50 feet and an arc length of 22.92 feet, the chord of which
336 bears South 80°35'17" East, 22.92 feet; thence South 10°38'02" West,
337 250.08 feet; thence South 88°30'14" East, 53.58 feet; thence South
338 71°00'42" East, 57.83 feet; thence South 01°29'46" East, 281.87 feet;
339 thence South 88°30'14" West, 75.00 feet; thence South 01°28'50" East,
340 522.53 feet; thence South 88°30'14" West, 27.13 feet; thence South
341 01°29'46" East, 260.63 feet, to the Southeast corner of Lot 1, Block 'E' in
342 Misty Harbor Estates No. 2 Subdivision; thence North 88°30'14" East, 30.00
343 feet; thence South 01°29'46" East, 160.00 feet; thence North 88°30'14"
344 East, 190.00 feet; thence southerly on a curve concave easterly, having a
345 radius measure of 297.20 feet and an arc length of 39.52 feet, the chord of
346 which bears South 5°18'16" East, 39.49 feet; thence North 88°30'14" East,
347 261.69 feet; thence South 7°36'14" East, 241.38 feet; thence South
348 88°30'14" West, 150.00 feet; thence South 1°29'46" East, 320.00 feet;
349 thence North 88°30'14" East, 669.05 feet; thence South 1°28'50" East, on
350 the East line of said Southwest Quarter, 385.25 feet, to the Northeast corner
351 of the Northwest Quarter of Section 26, Township 12 South, Range 15 east
352 of the 6th P.M.; thence South 00°09'12" East, on the East line of said
353 Northwest Quarter, 1299.00 feet; thence South 56°16'49" West, 720.00
354 feet; thence South 00°09'12" East, parallel with the East line of said
355 Northwest Quarter, 919.99 feet; thence South 89°02'19" West, on a line
356 which is 45 feet north of the South line of said Northwest Quarter, 708.43
357 feet; thence westerly, on a curve concave southerly, having a radius
358 measure of 447.50 feet and an arc length of 35.26 feet, the chord of which
359 bears South 86°46'54" West, 35.25 feet, to a point which is 16.84 feet north
360 of the Southeast corner of Lot 9 Block "A", in Colly Creek Subdivision No. 6;
361 thence on an assumed bearing of South 00°13'06" East, on the East line of

the West Half of the Northwest Quarter of Section 26, Township 12 South, Range 15 east of the 6th P.M., 16.84 feet, to the Southeast corner of Lot 9, Block "G" in Colly Creek Subdivision No. 6; thence on a 460.00 foot radius curve to the right, 264.29 feet; thence North 79°51'05" West, 493.87 feet; thence on a 540.00 foot radius curve to the left, 410.24 feet; thence South 56°37'15" West, 38.90 feet; thence on a 460.00 foot radius curve to the right, 206.79 feet; thence South 82°22'40" West, 261.54 feet; thence North 83°24'11" West, 163.01 feet; thence westerly, 80 feet south of and parallel with the South line of the Northeast Quarter of Section 27, Township 12 South, Range 15 east of the 6th P.M., 429.69 feet; thence North 73°38'13" West, 382.80 feet; thence North 00°20'44" West, 139.53 feet; thence North 89°44'11" East, 217.86 feet; thence North 00°15'49" West, 400.00 feet; thence South 89°44'11" West, 85.12 feet; thence North 00°15'49" West, 200.00 feet; thence South 89°44'11" West, 58.01 feet; thence North 00°15'49" West, 200.00 feet; thence South 89°44'11" West, to an intersection with the East line of S.W. Gage Boulevard; thence North 00°39'50" West, 860.02 feet; thence North 89°44'11" East, 250.39 feet; thence North 00°15'39" West, 200.00 feet; thence South 89°44'11" West, 251.79 feet; thence North 00°39'50" West, 636.15 feet, to a point on the South line of Section 22, Township 12 South, Range 15 east of the 6th P.M.; thence westerly, on said line 11.76 feet to the Southwest corner of Lot 4 in said Section 22; thence continuing westerly on said South line, to an intersection with a line which is 30 feet west of the East line of Lot 5 in said Section 22; thence northerly, on a line which is 30 feet west of the East line of Lots 5, 6 and 7 in said Section 22, to a point which is 502.00 feet north and 30 feet west of the Southeast corner of said Lot 7; thence westerly, on the South line of S.W. 40th Street, and its extension, to the Southwest corner of Blackburn Subdivision; thence northerly, to the Northwest corner of Lot 1, Block 'A' in Blackburn Subdivision; thence easterly, on the North line of Blackburn Subdivision, and its extension, to an intersection with a line which is 30 feet west of the East line of said Lot 7; thence northerly, on a line which is 30 feet west of the East lines of Lots 7 and 8 in said Section 22 to an intersection with the North line of Section 22; thence west on the North line of Section 22 to a point 527.20 feet east of the Northeast corner of the Northwest Quarter of Section 22, Township 12 South, Range 15 east of the 6th P.M.; thence on an assumed bearing of South 00°47'14" West, 1321.98 feet; thence North 89°29'14" West, 527.19 feet; thence North 89°23'29" West, 2650.19 feet, to an intersection with the West line of Section 22; thence southerly on the West line of said section to the East Quarter corner of Section 21, Township 12 South, Range 15 east of the 6th P.M.; thence on an assumed bearing of South 88°46'43" West, on the North line of the Southeast Quarter of said Section 21, 464.91 feet; thence South 54°02'14" West, 363.09 feet; thence South 50°29'18" West, 44.16 feet; thence southwesterly, on a curve concave northwesterly, having a radius measure of 1030.00 feet and an arc length of 710.30 feet, the chord of which bears

407 South 70°14'39" West, 696.31 feet; thence South 90°00'00" West, 8.57 feet;
408 thence northwesterly, on a curve concave northeasterly, having a radius
409 measure of 810.00 feet and an arc length of 272.67 feet, the chord of which
410 bears North 80°21'22" West, 271.39 feet; thence North 70°42'44" West,
411 708.74 feet; thence northwesterly, on a curve concave southwesterly,
412 having a radius measure of 966.50 feet and an arc length of 348.32 feet, the
413 chord of which bears North 81°02'12" West, 346.44 feet; thence South
414 88°38'20" West, 332.17 feet; thence South 86°43'47" West, 180.10 feet;
415 thence South 88°38'20" West, 35.22 feet; thence South 01°21'40" East,
416 51.49 feet; thence South 34°56'17" West, 344.26 feet; thence South
417 03°56'09" West, 122.53 feet; thence South 11°52'54" West, 231.70 feet; ;
418 thence South 89°06'31" East, 71.26 feet; thence South 67°46'48" East,
419 126.07 feet; thence South 49°59'15" East, 218.99 feet; thence South
420 28°03'34" East, 130.00 feet; thence South 00°23'53" East, 154.39 feet;
421 thence South 76°03'46" West, 147.76 feet; thence southerly, on a curve
422 concave westerly, having a radius measure of 412.00 feet and an arc length
423 of 155.03 feet, the chord of which bears South 00°28'07" West, 154.12 feet;
424 thence South 70°02'14" East, 187.76 feet; thence South 86°46'44" East,
425 149.34 feet; ; thence South 67°24'25" East, 163.14 feet; thence South
426 42°41'52" East, 80.40 feet; thence South 24°46'56" East, 142.36 feet;
427 thence South 68°32'44" East, 173.53 feet; thence South 32°54'02" East,
428 129.08 feet; thence South 00°32'09" East, 213.07 feet; thence South
429 16°50'03" West, 30.00 feet; thence westerly, on a curve concave southerly,
430 having a radius measure of 530.00 feet and an arc length of 124.82 feet, the
431 chord of which bears North 79°54'45" West 124.53 feet; thence South
432 03°20'26" West, 60.00 feet; thence westerly, on a curve concave southerly,
433 having a radius measure of 470.00 feet and an arc length of 28.84 feet, the
434 chord of which bears North 88°25'02" West, 28.83 feet; thence South
435 00°38'39" East, 149.80 feet; thence South 89°27'34" West, 645.28 feet;
436 thence North 00°40'39" West, 224.59 feet; thence South 89°28'25" West,
437 896.92 feet; thence North 00°30'03" West, 462.09 feet; thence South
438 87°33'24" West, 826.16 feet; to the northeast corner of Elevation Hill
439 Subdivision; thence South 88°36'57" West, 227.50 feet; thence North
440 01°10'51" West, on a line which is 52.50 feet east of the west line of the
441 southwest quarter of said Section 21, to an intersection with a line which is
442 30.00 feet north of the South line of the North Half of the Southeast Quarter
443 of Section 20, Township 12 South, Range 15 east of the 6th P.M.; thence
444 westerly, on said extension, to an intersection with the East line of said
445 Southeast Quarter; thence westerly, on a line which is 30.00 feet north of
446 the South line of the North Half of said Southeast Quarter, 100.00 feet;
447 thence southerly, parallel with the East line of said Southeast Quarter, to an
448 intersection with the South line of the North Half of said Southeast Quarter;
449 thence on an assumed bearing of South 89°28'33" West, on the South line
450 of the North Half of said Southeast Quarter, 726.34 feet, to the Northeast
451 corner Lot 4, Block 'D' in Brian's Addition No. 3; thence South 25°50'40"

East 202.34 feet to the East corner of Lot 5, Block 'D' in Brian's Addition No. 3; thence southwesterly on a curve concave southeasterly, having a radius measure of 280.00 feet and an arc length of 55.87 feet, the chord of which bears South 58°22'32" West, 55.78 feet; thence southwesterly on a curve concave northwesterly, having a radius measure of 220.00 feet and an arc length of 23.68 feet, the chord of which bears South 55°44'31" West, 23.67 feet; thence South 31°09'29" East, 312.31 feet to the most northerly East corner of Lot 1, Block 'E' in Brian's Addition No. 3; thence South 00°49'39" East 78.55 feet to the Southeast corner of Brian's Addition No. 3; thence North 89°28'53" East on the North line of Lauren's Bay Villas No.2, to the Northeast corner of Lot 15, Block A in said subdivision; thence South 0°54'31" East on a line which is 60.00 feet west of the East line of the Southeast Quarter of Section 20, Township 12 South, Range 15 east of the 6th P.M., to an intersection with the South line of said Southeast Quarter; thence South 0°18'18" East, on a line which is 60.00 feet west of the East line of the Northeast Quarter of Section 29, Township 12 South, Range 15 east of the 6th P.M., to the Southeast corner of Lot 30, Block B in Lauren's Bay Villas No. 2; thence North 89°45'29" West, 375.60 feet to the Southwest corner of Lot 29, Block B in said subdivision; thence South 0°18'18" East, 200.00 feet to the Southeast corner of Lot 7 in Block B in said subdivision; thence North 89°45'29" West on the South line of the Pottawatomie Reserve, 820.94 feet to the Northwest corner of Lot 1, Block E in Woodland Heights 2nd Subdivision; thence South 0°15'48" East on the West line of Woodland Height 2nd Subdivision, 405.65 feet; thence South 0°10'48" East on the West lines of Woodland Heights Subdivision No. 3 and Woodland Heights 2nd Subdivision, 220.00 feet; thence North 89°39'50" East on the South line of SW 46th Terrace, formerly SW 47th Street Terrace as platted in Woodland Heights 2nd Subdivision, 195.70 feet; thence South 0°17'38" East on the West line of Lot 2, Block "G" in Woodland Heights 2nd Subdivision, 155.00 feet; thence North 89°42'22" East on the South line of Lot 2, Block "G" in Woodland Heights 2nd Subdivision, 244.57 feet; thence South 0°18'26" East on a West line of Woodland Heights 2nd Subdivision, 214.07 feet; thence North 89°40'25" East on a South line of a public street platted in Woodland Heights 2nd Subdivision, 107.64 feet; thence northeasterly on a South line of a public street platted in Woodland Heights 2nd Subdivision, on a curve concave northwesterly, having a radius measure of 282.00 feet and an arc length of 168.26 feet, the chord of which bears North 72°34'49" East, 165.78 feet; thence South 34°33'36" East on the Southwest line of Lot 5, Block "C" in Woodland Heights 2nd Subdivision, 261.85 feet; thence South 30°20'26" East, 182.33 feet; thence North 89°45'39" East, 44.40 feet; thence South 30°23'44" East, 59.89 feet to a point on the South line of Algonquin Trafficway as platted in Woodland Heights Subdivision; thence North 59°44'00" East on the South line of Algonquin Trafficway, 31.97 feet; thence northeasterly on the South line of Algonquin Trafficway on a curve concave

497 southeasterly, having a radius measure of 222.00 feet and an arc length of
498 116.20 feet, the chord of which bears North 75°02'50" East, 114.89 feet;
499 thence North 89°41'27" East on the South line of Algonquin Trafficway,
500 40.04 feet to an intersection with a line which is 60 feet west of the East line
501 of said Northeast Quarter; thence South 0°19'43" East parallel with the East
502 line of said Northeast Quarter, 386.19 feet to a point on the North line of
503 Algonquin Trafficway as platted in Woodland Heights Subdivision; thence
504 South 89°40'16" West on the North line of said Algonquin Trafficway, 40.00
505 feet; thence westerly on the North line of said Algonquin Trafficway, on a
506 curve concave northerly, having a radius measure of 792.00 feet and an arc
507 length of 142.16 feet, the chord of which bears North 84°50'50" West,
508 141.97 feet to an intersection with an extension of the West line of Block D
509 in Woodland Heights Subdivision; thence South 10°30'07" West on the
510 West line of said Block D and its extension, 636.35 feet to the Southwest
511 corner of Lot 3 in said Block D; thence South 89°16'56" West on the South
512 line of said Northeast Quarter, 398.96 feet; thence South 0°15'47" East
513 parallel with the East line of the Southeast Quarter of said Section 29,
514 1128.48 feet to a point 198.0 feet north of the South line of the Northeast
515 Quarter of said Southeast Quarter; thence North 88°57'31" East, 99.94 feet;
516 thence South 0°17'00" East, 198.12 feet to a point on the South line of the
517 Northeast Quarter of said Southeast Quarter which is 660.00 feet west of
518 the Southeast corner of the Northeast Quarter of said Southeast Quarter;
519 thence North 89°11'00" East on the North line of the Southeast Quarter of
520 the Southeast Quarter of said Section 29, 620.00 feet to an intersection with
521 a line which is 40.00 feet west of the East line of said quarter-quarter
522 section; thence South 0°15'52" East, parallel with the East line of said
523 quarter-quarter section, 1189.27 feet; thence South 16°46'48" West, 53.30
524 feet to a point which is 85.00 feet north of the South line of the Southeast
525 Quarter of the Southeast Quarter of said Section 29 and 55.62 feet west of
526 the East line of said quarter-quarter section; thence South 77°37'36" West,
527 80.57 feet to a point which is 69.00 feet north of the South line of said
528 quarter-quarter section; thence South 0°57'05" East, 29.00 feet; thence
529 South 89°02'55" West on a line which is 40.00 feet north of the South line of
530 said quarter-quarter section, 335.89 feet; thence South 0°57'05" East, 15.00
531 feet; thence South 89°02'55" West on a line which is 25.00 feet north of the
532 South line of the Southeast Quarter of the Southeast Quarter of said
533 Section 29, 848.08 feet to an intersection with the West line of said quarter-
534 quarter section; thence North 0°19'05" West on the West line of said
535 quarter-quarter section, 1303.00 feet to the Northwest corner of the
536 Southeast Quarter of the Southeast Quarter of said Section 29; thence
537 South 89°11'00" West on the South line of the North Half of the Southeast
538 Quarter of said Section 29, 1319.04 feet to the Southwest corner of the
539 Northwest Quarter of the Southeast Quarter of said Section 29; thence
540 North 0°30'27" West on the West line of the North Half of the Southeast
541 Quarter of said Section 29, 1329.04 feet to the Northwest corner of the
542 Southeast Quarter of said Section 29; thence South 89°19'02" West, on the

South line of the Southeast Quarter of the Northwest Quarter of said Section 29, 1319.13 feet; thence North 0°30'32" West on the West line of the Southeast Quarter of the Northwest Quarter of said Section 29 and on the West line of the East Half of Lot 2 in the Northwest Quarter of said Section 29, 1693.97 feet; thence North 89°49'59" East, 676.36 feet; thence North 0°32'21" West, 673.72 feet to a point on the North line of Lot 2 in the Northwest Quarter of said Section 29, also being the Southwest corner of Lot 3, Block C in Bridle Path Acres Subdivision; thence North 89°51'00" East on the North line of Lot 2 in the Northwest Quarter of said Section 29, 650.24 feet to the Northeast corner of said Lot 2; thence North 00°25'18" West, on the West line of the Northeast Quarter of Section 29, Township 12 South, Range 15 east of the 6th P.M., 308.95 feet, to the Southwest corner of the Southeast Quarter of said Section 20; thence North 00°39'49" West, 1314.81 feet, to the Northwest corner of the Southwest Quarter of said Southeast Quarter; thence northerly, on the West line of said Southeast Quarter, also being on the West line of Monarch Meadow Subdivision, 1320.79 feet, to the Northwest corner of said Southeast Quarter; thence on an assumed bearing of North 00°39'56" West, on the West line of the Northeast Quarter of said Section 20, 1321.86 feet, to the Northwest corner of Lot 8, Block "B" in South Branch Subdivision; thence on an assumed bearing of North 00°39'11" West, 376.40 feet; thence South 57°47'36" East, 129.93 feet; thence North 18°16'12" East, 45.99 feet; thence North 89°19'37" East, 91.26 feet; thence South 07°42'39" West, 111.46 feet to the front common lot corner of Lots 9 and 10, Block "A", Glenwood Subdivision also being on the North line of S.W. 38th Place; thence southerly and easterly on said North line and its extension across S.W. Arvonja Place to the Southwest corner of Lot 28, Block "B", Glenwood Subdivision; thence North 00°40'23" West, on the West lines of Lots 28 through 15, Block "B" to the Northwest corner of said Lot 15, being on the South line of S.W. 37th Street; thence easterly on said South line, to an intersection with the West line of Shadywood West Subdivision, when extended southerly; thence northerly on said extension to the North line of S.W. 37th Street; thence North 00°47'12" West, 1280.10 feet; thence North 00°13'15" East, 529.59 feet; thence South 89°20'15" West, 340.00 feet; thence North 00°13'15" East, 200.00 feet to the South line of S.W. 34th Terrace; thence South 89°20'15" West, 100.00 feet; thence North 00°13'15" East, 270.02 feet; thence North 89°20'15" East, 100.00 feet; thence North 00°13'15" East, 321.13 feet, to the North line of the Southeast Quarter of Section 17, Township 12 South, Range 15 east of the 6th P.M.; thence easterly on the North line of said Southeast Quarter, 1424.63 feet; thence on an assumed bearing of South 00°17'23" East, 208.71 feet; thence North 89°20'50" East, to the West line of S.W. Wanamaker Road; thence northerly on the West line of Wanamaker Road to the South line of Crestridge Square Subdivision No. 2; thence on an assumed bearing of South 89°37'17" West, to the Southwest corner of Lot 9, Block "A" of said subdivision; thence westerly, on the South

line of Mission Center Subdivision No. 1, to the Southwest corner of said subdivision also being on the West line of the Northeast Quarter of Section 17; thence northerly, on said West line to the Southeast corner of the Southwest Quarter of Section 8, Township 12 South, Range 15 east of the 6th P.M.; thence northerly, on the East line of said Southwest Quarter, to the Southeast corner of Lot 19, Block "A", Southwest Meadows Subdivision; thence westerly, on the North line of S.W. 29th Street, and its extensions to the Southeast corner of Lot 1, Block "A", Mission Woods Subdivision No. 2; thence westerly on a line which is 50 feet north of the South line of the Southwest Quarter of Section 8, Township 12 South, Range 15 east of the 6th P.M. to a point which is 738.59 feet east of the Southwest corner of said Southwest Quarter; thence westerly on the North line of S.W. 29th Street, to an intersection with an extension of the East line of Sherwood Estates Subdivision No. 23; thence southerly on the East line of Sherwood Estates Subdivision No. 23, and its extension, to the Southeast corner of said subdivision; thence westerly on the South line of said subdivision to an intersection with the East line of S.W. Urish Road, being a line which is 40 feet east of the West line of the Northwest Quarter of Section 17, Township 12 South, Range 15 east of the 6th P.M.; thence northerly, parallel with the West line of the Northwest Quarter of said Section 17 to an intersection with the North Line of said Northwest Quarter; thence northerly on a line which is 40 feet east of the West line of the Southwest Quarter of Section 8, Township 12 South, Range 15 east of the 6th P.M., to an intersection with an extension of the North line of SW 29th Street from the East, also being a line which is 50 feet north of the South line of said Southwest Quarter; thence westerly parallel with the South line of the Southwest Quarter of said Section 8 to an intersection with the West line of said Southwest Quarter; thence west-southwesterly to the intersection of the West line of Urish Road and the North line of SW 29th Street, being an intersection of a line which is 40 feet west of the East line of the Southeast Quarter of Section 7, Township 12 South, Range 15 east of the 6th P.M. with a line which is 40 feet north of the South line of said Southeast Quarter; thence northerly on said West line of Urish Road to the Southeast corner of Lot 1, Block "A", Good Shepherd Lutheran Church Subdivision; thence westerly on the South line of said Lot 1, 458.98 feet, to the East line of Lot 2, Block "A", of said subdivision; thence southerly on the East line of said Lot 2 to the North line of S.W. 29th Street; thence westerly on said North line to the Southwest corner of Lot 1, Block "A", Tallgrass Subdivision; thence northerly on the West line of said Lot 1, 1268.94 feet, to an intersection with the South line of the North Half of the South Half of Section 7, Township 12 south, Range 15 East of the 6th P.M.; thence westerly on the South line of the North Half of said South Half to a point that is 694.00 feet easterly of the West line of the Southwest Quarter of said Section 7; thence northerly, parallel with said West line, 200.00 feet; thence westerly parallel with the South line of the North Half of the Southwest Quarter, 654.00 feet, more or less, to an intersection with a line which is 25 feet east of the West line of said

Southwest Quarter; thence southerly, parallel with the West line of said Southwest Quarter, to an intersection with the South line of the North Half of said Southwest Quarter; thence westerly on the South line of the North Half of said Southwest Quarter, to the Northeast corner of the South Half of the Southeast Quarter of Section 12, Township 12 South, Range 14 east of the 6th P.M.; thence westerly on the North line of the South Half of said Southeast Quarter, to an intersection with a line which is 52.50 feet west of the East line of said Southeast Quarter; thence on an assumed bearing of South 00°01'43" West, on a line which is parallel with the East line said Southeast Quarter, also being the West line of S.W. Indian Hills Road, to the most southerly Northeast corner of Lot 9, Block "D" in Sherwood Park Subdivision; thence South 05°44'27" West, 120.60 feet to an East corner of Lot 8, Block "D" in Sherwood Park Subdivision; thence South 00°01'43" West, 161.79 feet to an East corner of Lot 7, Block "D" in Sherwood Park Subdivision; thence South 45°31'42" West, 39.25 feet to a South corner of said Lot 7; thence North 88°58'19" West, 11.79 feet to a South corner of said Lot 7; thence South 87°12'50" West, 180.40 feet to a South corner of Lot 6, Block "D" in Sherwood Park Subdivision which is 50.50 feet east of the Southwest corner of said Lot 6; thence North 88°58'19" West, on a line which is 52.50 feet north of the South line of said Southeast Quarter, to an intersection with the West line of said Southeast Quarter; thence on an assumed bearing of North 88°58'19" West, on a line which is 52.50 feet north of the Southwest Quarter of said Section 12, 748.83 feet to the Southwest corner of Lot 4, Block 'A' in Sherwood Park Subdivision No. 8; thence North 01°01'41" East, 1290.30 feet to the Northwest corner of Lot 31, Block 'A' in said subdivision; thence North 88°58'19" West, 64.07 feet to the Southwest corner of S.W. 27th Street in Sherwood Park Subdivision No. 8; thence North 00°09'46" East, 227.81 feet to the Northwest corner of Lot 1, Block 'C' in said subdivision; thence North 89°50'11" West 291.66 Feet; thence North 61°14'14" West, 478.62 feet; thence North 00°09'49" East, 900.00 feet to an intersection with the North line of said Southwest Quarter; thence South 89°01'00" East on the North line of said Southwest Quarter, 1494.56 feet to the Northwest corner of the Southeast Quarter of said Section 12; thence easterly to the Northeast corner of said Southeast Quarter; thence easterly on the South line of the Northwest Quarter of Section 7, Township 12 South, Range 15 east of the 6th P.M., to an intersection with a line which is 40 feet east of the West line of said Northwest Quarter; thence on an assumed bearing of North 01°22'07" West, on a line which is 40 feet east of the West line of the last said Northwest Quarter, to an intersection with an extension of the South line of Miller's Glen Subdivision; thence South 88°37'53" West, 40.00 feet, to the Southeast corner of Miller's Glen Subdivision; thence continuing on South 88°37'53" West, 192.50 feet; thence North 84°56'23" West, 178.62 feet; thence South 88°37'53" West, 105.00 feet; thence North 01°22'07" West, 130.00 feet; thence South 88°37'53" West, 125.00 feet; thence South

679 70°02'33" West, 411.40 feet; thence South 43°37'53" West, 472.50 feet;
680 thence North 01°19'36" West, on the West line of the East Half of the
681 Northeast Quarter of Section 12, Township 12 South, Range 14 east of the
682 6th P.M., 1623.48 feet to a point on a line which is 52.50 feet south of the
683 North line of said Northeast Quarter; thence North 89°33'47" East, parallel
684 with the North line of said Northeast Quarter, 765.65 feet; thence South
685 00°26'13" East, 38.58 feet; thence southeasterly, on a curve concave
686 northeasterly, having a radius measure of 100.00 feet and an arc length of
687 78.54 feet, the chord of which bears South 22°56'13" East, 76.54 feet;
688 thence South 45°26'13" East, 193.72 feet; thence southeasterly, on a curve
689 concave southwesterly, having a radius measure of 200.00 feet and an arc
690 length of 107.09 feet, the chord of which bears South 30°05'49" East,
691 105.82 feet; thence South 14°45'26" East, 41.00 feet; thence southeasterly,
692 on a curve concave northeasterly, having a radius measure of 200.00 feet
693 and an arc length of 110.34 feet, the chord of which bears South 30°33'47"
694 East, 108.95 feet; thence South 46°22'07" East, 168.38 feet; thence North
695 88°37'53" East, 110.00 feet, to a point on a line which is 52.50 feet west of
696 the East line of said Northeast Quarter, thence South 01°22'07" East,
697 parallel with the East line of said Northeast Quarter, 329.06 feet; thence
698 North 87°04'11" East, 52.52 feet, to the Southwest corner of the North
699 966.50 feet of the Northwest Quarter of Section 7, Township 12 South,
700 Range 15 east of the 6th P.M.; thence on an assumed bearing of North
701 88°26'14" East, on the South line of said North 966.50 feet, to an
702 intersection with the West line of the Northeast Quarter of Section 7,
703 Township 12 South, Range 15 east of the 6th P.M.; thence northerly on the
704 West line of the Northeast Quarter of said Section 7 to the Northwest corner
705 of said Northeast Quarter; thence northerly to the Southwest corner of Tract
706 16 in Busby Subdivision; thence easterly to the Southwest corner of Tract 2
707 in Busby Subdivision; thence northerly to the Northwest corner of said Tract
708 2; thence easterly on the North line of Busby Subdivision, and its extension,
709 to an intersection with a line which is 30 feet east of the West line of the
710 Southwest Quarter of Section 5, Township 12 South, Range 15 east of the
711 6th P.M.; thence southerly parallel with the West line of said Southwest
712 Quarter to the Southwest corner of Lot 45 in Broadview Acres; thence
713 westerly on an extension of the South line of said Lot 45 to an intersection
714 with a line which is 25 feet east of the West line of said Southwest Quarter;
715 thence southerly parallel with the West line of said Southwest Quarter to an
716 intersection with a line which is 30 feet north of the South line of said
717 Southwest Quarter; thence easterly parallel with the South line of said
718 Southwest Quarter to an intersection with an extension of the East line of
719 Lot 4, Block "D" in Brookfield West Subdivision No. 3; thence southerly on
720 said extension to the North line of the Northwest Quarter of Section 8,
721 Township 12 South, Range 15 east of the 6th P.M.; thence southerly on said
722 extension and on the East line of said Lot 4, 268.00 feet; thence east
723 163.00 feet; thence northerly on the West lines of Lots 10 and 11, Block "D"
724 in Brookfield West Subdivision No. 3, to the Northwest corner of said Lot 11;

725 thence easterly on a line which is 50 feet south of the North line of said
726 Northwest Quarter to an intersection with an extension of the West line of
727 the East Half of the East Half of the Southwest Quarter of Section 5,
728 Township 12 South, Range 15 east of the 6th P.M.; thence northerly, to the
729 Northwest corner of the East Half of the East Half of said Southwest
730 Quarter; thence easterly to the Northeast corner of the East Half of the East
731 Half of said Southwest Quarter; thence on an assumed bearing of North
732 88°03'39" East on the South line of the Northeast Quarter of Section 5,
733 Township 12 South, Range 15 east of the 6th P.M., 342.81 feet; thence
734 North 01°56'21" West on the West line of Lot 1, Block A in Shideler Plaza
735 Subdivision and the extension of said West line, 796.08 feet; thence North
736 88°03'39" East, 149.83 feet; thence North 1°56'21" West, 501.23 feet;
737 thence North 63°27'19" West, 117.10 feet; thence North 26°32'23" East,
738 85.92 feet to a point on the South line of Lot 1, Block A in West Hill
739 Subdivision; thence North 89°40'08" West on the last said South line,
740 373.75 feet to the Southwest corner of said Lot 1, being a point on the West
741 line of said Northeast Quarter described as 1150.05 feet south of the
742 Northeast corner of the Northwest Quarter of said Section 5; thence on an
743 assumed bearing of South 00°32'58" East, on the East line of said
744 Northwest Quarter, 498.97 feet; thence South 87°53'48" West, 970.07 feet;
745 thence North 00°39'52" West, 1617.77 feet to a point on a line which is 30
746 feet south of the North line of said Northwest Quarter; thence South
747 87°53'48" West on a line which is 30 feet south of the North line of the
748 Northwest Quarter of said Section 5, 1601.44 feet to a point on a line which
749 is 25 feet east of the West line of said Northwest Quarter; thence North
750 00°53'14" East, parallel with the West line of said Northwest Quarter, 30.04
751 feet to a point on the North line of said Northwest Quarter; thence North
752 01°50'24" West, on a line which is 25 feet east of the West line of the
753 Southwest Quarter of Section 32, Township 11 South, Range 15 east of the
754 6th P.M., 552.48 feet; thence North 87°53'51" East, 620.82 feet; thence
755 north-northeasterly on a curve concave easterly, having a radius measure of
756 288.50 feet and an arc length of 236.75 feet, the chord of which bears North
757 22°25'24" East, 230.03 feet; thence North 37°31'27" East, 73.75 feet;
758 thence North 87°53'51" East, 67.65 feet; thence South 61°37'24" East,
759 93.15 feet; thence North 87°18'00" East, 381.34 feet to a point on the West
760 line of the Southeast Quarter of the Southwest Quarter of said Section 32;
761 thence South 01°46'12" East on the West line of the Southeast Quarter of
762 the Southwest Quarter of said Section 32, 111.59 feet to the Northwest
763 corner of the South Half of the Southeast Quarter of the Southwest Quarter
764 of said Section 32; thence North 87°54'38" East on the North line of said
765 South Half, 1316.47 feet to a point on the West line of the Southeast
766 Quarter of said Section 32; thence North 01°41'55" West on the West line of
767 the Southeast Quarter of said Section 32, 666.05 feet, to the Northwest
768 corner of the South Half of the Southeast Quarter of Section 32; thence
769 easterly on the North line of the South Half of said Southeast Quarter,
770 186.92 feet, to the Westerly right-of-way line of U.S. Interstate Highway 470;

771 thence northwesterly, on said Westerly right-of-way line, to a point on the
772 North line of S.W. 10th Street; thence westerly on the North line of S.W.
773 10th Street, to an intersection with an extension of the East line of Red
774 Oaks Place; thence on an assumed bearing of South 01°35'05" East, on the
775 East line of Red Oaks Place, and its extension, 1367.31 feet, to the
776 Southeast corner of Red Oaks Place; thence South 87°55'48" West,
777 1090.50 feet, to the East line of Urish Road; thence North 01°50'38" West,
778 on the East line of Urish Road, and its extensions, 1327.96 feet, to an
779 intersection with the North line of the Southwest Quarter of Section 32,
780 Township 11 South, Range 15 east of the 6th P.M.; thence South 87°57'54"
781 West, on the North line of said Southwest Quarter, to the Southeast corner
782 of the Northeast Quarter of Section 31, Township 11 South, Range 15 east
783 of the 6th P.M.; thence South 87°16'57" West on the South line of said
784 Northeast Quarter, 40.01 feet; thence North 01°42'41" West parallel with the
785 East line of said Northeast Quarter, 40.01 feet to the Southeast corner of
786 Lot 1, Block 'A' in Gail Subdivision; thence South 87°16'57" West on the
787 South line of Lot 1, 418.68 feet; thence South 89°11'01" West on the North
788 line of SW 10th Street, 509.17 feet; thence North 70°28'23" West on the
789 North line of SW 10th Street, 251.06 feet to the West corner of Lot 12, Block
790 'A' in Gail Subdivision; thence North 58°39'21" West, 60.29 feet to the South
791 corner of Lot 2, Block 'A' in Gail Subdivision; thence northwesterly on the
792 Southwest line of Lot 2 being a curve concave northeasterly, having a radius
793 measure of 527.96 feet and an arc length of 130.17 feet, the chord of which
794 bears North 43°36'28" West, 129.84 feet; thence North 01°04'20" West on
795 the West line of Gail Subdivision, 631.43 feet to the Northwest corner
796 thereof; thence North 87°24'52" East on the North line of Gail Subdivision,
797 835.00 feet; thence South 89°30'42" East on the North line of Gail
798 Subdivision, 375.50 feet to a point on the West line of SW Urish Road;
799 thence South 11°48'27" East on the West line of Urish Road, 409.64 feet;
800 thence North 88°17'19" East, 75.00 feet to an intersection with a line which
801 is 25 feet east of the West line of the Northwest Quarter of Section 32,
802 Township 11 South, Range 15 east of the 6th P.M.; thence North 01°42'41"
803 West, parallel with the West line of said Northwest Quarter, to an
804 intersection with the North line of said Northwest Quarter; thence North
805 87°45'17" East, 2613.78 feet, to the Northwest corner of the Northeast
806 Quarter of Section 32, Township 11 South, Range 15 east of the 6th P.M.;
807 thence easterly, on the South line of the Southeast Quarter of Section 29,
808 Township 11 South, Range 15 east of the 6th P.M., 134.78 feet; thence
809 northerly, at a right angle, 30.00 feet; thence westerly, parallel with the
810 South line of said Southeast Quarter, 134.33 feet; thence Northerly, on the
811 West line of said Southeast Quarter, to the Northwest corner of Lot 15,
812 Block 'A' in River Hill Residential Subdivision; thence westerly on the North
813 line of the South Half of the Southwest Quarter of said Section 29, to the
814 most westerly Southwest corner of Lot 13, Block 'A' in River Hill Residential
815 Subdivision; thence northerly to the Northwest corner of said Lot 13; thence

easterly, to the Northeast corner of Lot 11, Block 'A' in River Hill Residential Subdivision; thence southerly, to the Northwest corner of Lot 10, Block 'A' in River Hill Residential Subdivision; thence on an assumed bearing of North 87°45'41" East, on a North line of River Hill Residential Subdivision, 996.42 feet; thence North 00°42'20" West, 39.40 feet; thence North 87°45'41" East, on a North line of River Hill Residential Subdivision, 330.00 feet, to an intersection with the West line of the Southwest Quarter of Section 28, Township 11 South, Range 15 east of the 6th P.M.; thence on an assumed bearing of North 01°23'09" East, on the West line of the last said Southwest Quarter, to the Southwest corner of the Northwest Quarter of said Section 28; thence North 00°27'26" East, on the West line of said Northwest Quarter, to the Northwest corner of Lot 1, Block A in Menninger Subdivision; thence easterly, on the North line of said Lot 1, to the Northeast corner of said Lot 1; thence northerly, on the West line of the Northeast Quarter of said Section 28, to the South bank of the Kansas River; thence continuing northerly on the West lines of the East Halves of Sections 28 and 21, Township 11 south, Range 15 east of the 6th P.M., to the North line of Lower Silver Lake Road; thence east on the North line of Lower Silver Lake Road to the East line of Menoken Road; thence northerly on the East line of Menoken Road, 1281.10 feet; thence easterly on the North line of Sun Valley Subdivision No. 2 to the Northeast corner thereof; thence southerly on the East line of said subdivision, 1279.38 feet, to the North line of Lower Silver Lake Road; thence easterly on said North line to the West line of Kaw Half-Breed Reserve No. 1; thence north on the West line of Kaw Half-Breed Reserve No. 1, to the Northwest corner of said Reserve No. 1; thence northeasterly to the intersection of the North right-of-way line of U.S. Highway No. 24 and the West line of the Southwest Quarter of Section 14, Township 11 South, Range 15 east of the 6th P.M. said point being 100.00 feet north of the Centerline of U.S. Highway 24; thence on an assumed bearing of North 00°25'08" West, 1065.79 feet, to a point which is 287.2 feet south of the Northwest corner of said Southwest Quarter, being an intersection with the Northwest line of US Highway 75; thence South 52°13'52" West, on the Northwest line of US Highway 75, 25.16 feet; thence North 00°25'08" West, on a line which is 20 feet west of the East line of Lot 3 in Section 15, Township 11 South, Range 15 east of the 6th P.M., 302.19 feet, to a point on the North line of said Lot 3; thence North 01°18'04" East, on a line which is 20 feet west of the East line of Lot 2 in said Section 15, 18.96 feet; thence North 88°12'36" East, on a line which is 30 feet north of the Centerline of Northwest 25th Street, 1010.99 feet; thence North 01°47'24" West, 92.55 feet; thence North 37°59'36" East, 364.65 feet; thence South 01°46'48" West, 338.02 feet; thence North 85°43'36" East, 67.89 feet; thence South 04°20'53" East, 134.68 feet, to the Northeast corner of Lot 1, Block 'A' in BRB Subdivision; thence South 04°20'53" East, 375.00 feet; thence South 11°14'02" West, 519.20 feet; thence South 41°56'26" West, 471.70 feet, to the south corner of BRB Subdivision; thence easterly, on a line which is 150.00 feet north of the Centerline of US

862 Highway 24 to the East right-of-way line of the Chicago Rock Island and
863 Pacific Railroad; thence northerly on the East right-of-way line of said
864 railroad to its intersection with the West line of Section 18, Township 11
865 south, Range 16 east of the 6th P.M.; thence north on the West line of said
866 Section 18 to the South line of Menninger Road; thence west on the South
867 line of Menninger Road to its intersection with the West line of Green Hills
868 Road; thence north on said West line to its intersection with the South line
869 of the Southeast Quarter of Section 12, Township 11 South, Range 15 East
870 of the 6th P.M.; thence westerly on said South line to the East right-of-way
871 line of the Chicago Rock Island and Pacific Railroad; thence northwesterly
872 on said East line to the South line of N.W. 35th Street; thence easterly on
873 said South line to the Northeast corner of Lot 1, Block "D", Forest Hills
874 Estates Subdivision; thence southerly on the East lines of Lots 1 and 2,
875 Block "D" in said subdivision to the Southeast corner of Lot 2, Block "D" in
876 said subdivision; thence easterly, 242.00 feet south of and parallel with the
877 North line of said Southeast Quarter, to an intersection with the East line of
878 Green Hills Road; thence southerly on the said East line of Green Hills
879 Road to an intersection with a line which is 20 feet north of the South line of
880 the Southwest Quarter of Section 7, Township 11 South, Range 16 east of
881 the 6th P.M.; thence easterly, parallel with the South line of the Southwest
882 Quarter of said Section 7, to an intersection with an the West line of Daisy
883 Brown Martin Subdivision; thence northerly, to the Southwest corner of Lot
884 11 in said subdivision; thence easterly, on the North line of Menninger
885 Road, to the Southeast corner of Lot 36 in Daisy Brown Martin Subdivision;
886 thence southerly, on an East line of Daisy Brown Martin Subdivision, to an
887 intersection with a line which is 20 feet north of the South line of the
888 Southwest Quarter of said Section 7; thence easterly, on an assumed
889 bearing of North 88°20'01" East, parallel with the South line of the
890 Southwest Quarter of said Section 7, to an intersection with the West line of
891 Rochester Cemetery; thence North 00°51'36" West, 1467.73 feet; thence
892 North 89°40'29" East, on the North line of Rochester Cemetery, 98.5 feet to
893 the Southeast corner of Lot 49 in Daisy Brown Martin Subdivision; thence
894 North 01°24'25" West, 323.50 feet, to the Northeast corner of said Lot 49;
895 thence South 86°51'36" West, 434.00 feet, to the Northwest corner of said
896 Lot 49; thence North 01°24'25" West, parallel with the West line of the
897 Southwest Quarter of said Section 7, 467.64 feet; thence South 88°05'43"
898 West, parallel with the North line of the Southwest Quarter of said Section 7,
899 50.0 feet; thence North 01°24'25" West, parallel with the West line of the
900 Southwest Quarter of said Section 7, 300.0 feet; thence North 88°05'43"
901 East, parallel with the North line of the Southwest Quarter of said Section 7,
902 50.0 feet; thence North 01°24'25" West, 60.0 feet, to an intersection with a
903 line which is 20 feet south of the North line of the Southwest Quarter of said
904 Section 7; thence North 88°05'43" East, parallel with the North line of the
905 Southwest Quarter of said Section 7, 970.09 feet; thence South 01°26'37"
906 East, parallel with the East line of said Southeast Quarter, 580.0 feet;
907 thence North 88°05'43" East, parallel with the North line of said Southwest

Quarter, 179.50 feet, to an intersection with the West line of the Southeast Quarter of said Section 7; thence North $88^{\circ}17'11''$ East, parallel with the North line of the Southeast Quarter of said Section 7, 200.0 feet; thence South $01^{\circ}26'37''$ East, parallel with the West line of the Southeast Quarter of said Section 7, 1739.28 feet; thence South $88^{\circ}01'54''$ West, parallel with the South line of said Southeast Quarter, 200 feet; thence South $01^{\circ}26'37''$ West, on the West line of said Southeast Quarter, 289.97 feet, to an intersection with a line which is 20 feet north of the South line of the Southeast Quarter of said Section 7, also being the North line of Menninger Road; thence easterly, parallel with the South line of said Southeast Quarter, to an intersection with an extension of the West line of Lot 2A in Tolin Subdivision; thence northerly, to the Southwest corner of Lot 2A in Tolin Subdivision; thence easterly, to the Southeast corner of Lot 1A in Tolin Subdivision; thence southerly, on an extension of the East line of Lot 1A in Tolin Subdivision to an intersection with a line which is 20 feet north of the South line of the Southeast Quarter of said Section 7; thence easterly, parallel with the South line of said Southeast Quarter, to an intersection with the West line of Ward Lot Subdivision; thence northerly, to the Southwest corner of Ward Lot; thence easterly, to the Southeast corner of Ward Lot; thence southerly, on the East line of Ward Lot Subdivision, to an intersection with a line which is 20 feet north of the South line of the Southeast Quarter of said Section 7; thence easterly, parallel with the South line of said Southeast Quarter, to an intersection with the Centerline of Rochester Road; thence northerly on the Centerline of Rochester Road, to an intersection with a line which is 50 feet north of the South line of the Southeast Quarter of said Section 7; thence easterly parallel with the South line of said Southeast Quarter, to an intersection with the West line of the Southwest Quarter of Section 8, Township 11 South, Range 16 east of the 6th P.M.; thence northerly to the Southwest corner of Lot 1 in Dale Lots; thence easterly, to the Southeast corner of Lot 2 in Dale Lots; thence southerly, on an extension of the East line of Dale Lots subdivision, to an intersection with a line which is 50 feet north of the South line of the Southwest Quarter of said Section 8; thence easterly, parallel with the South line of said Southwest Quarter, to an intersection with the West line of the East Half of said Southwest Quarter; thence southerly, to an intersection with a line which is 8 feet north of the South line of said Southwest Quarter; thence easterly, parallel with the South line of said Southwest Quarter, to a point which is 496 feet east of the Southwest corner of the East Half of the Southwest Quarter of said Section 8, as measured on and normal from said South line; thence east-northeasterly, to an intersection with a line which is 20 feet north of the South line of the East Half of said Southwest Quarter, at a point which is 678 feet east of the Southwest corner of the East Half of said Southeast Quarter, as measured on and normal from said South line; thence easterly, parallel with the South line of the East Half of said Southwest Quarter, to an intersection with the West line of the Southeast Quarter of said Section 8; thence easterly, on a line which is 20 feet north of

the South line of said Southeast Quarter, to an intersection with a line which is 30 feet east of the West line of said Southeast Quarter; thence southerly, parallel with the West Line of said Southeast Quarter, to an intersection with the North line of Section 17, Township 11 south, Range 16 east of the 6th P.M.; thence easterly, on the North line of said Section 17, to the East Right-of-way line of Soldier Creek Cutoff and Channel Improvement; thence southerly and easterly on said right-of-way line to the East line of Kaw Half-Breed Reserve No. 5; thence southerly, 592.92 feet on said East line to its intersection with the Centerline of Indian Creek, the same being the Northwest corner of Hillyers Subdivision; thence in an easterly direction, following the meandering of said Indian Creek, to a point which is 17.00 chains west of the East line and 14.13 chains north of the Southeast corner of the Northeast Quarter of Kaw Half-Breed Reserve No. 6; thence southerly, parallel with the East line of said Kaw Reserve No. 6 about 51.50 chains distance to the North Bank of the Kansas River; thence northwesterly on the said Kansas River bank to the intersection with the East line of Oakland Addition when extended north; thence southerly, on said extension of the East line of Oakland Addition to the Northeast corner of said addition; thence continuing southerly on the East line of said addition, to a point 2657.77 feet north of the Southwest corner of Section 22; thence on an assumed bearing of North 88°34'44" East, 139.90 feet; thence South 47°09'21" East, 1915.20 feet; thence North 00°12'26" East, 2260.65 feet; thence South 61°49'02" East, 353.78 feet; thence South 53°47'05" East, 788.21 feet; thence South 74°58'05" East, 119.87 feet, to the West line of N.E. Lahr Avenue; thence South 00°06'44" East, on the West line of Lahr Avenue, 1569.01 feet, to the South line of the North Half of the Southwest Quarter of said Section 22; thence easterly on said South line, 30.00 feet, to the Northeast corner of the South Half of the Southwest Quarter of said Section 22; thence southerly, 1320 feet, more or less, to the Southeast corner of the Southwest Quarter of said Section 22; thence easterly, on the North line of Section 27, Township 11 South, Range 16 east, of the 6th P.M., to the Northeast corner of said section; thence southerly, on the East line of said Section 27, 2656.13 feet, to the Southwest corner of the Northwest Quarter of Section 26, Township 11 South, Range 16 east, of the 6th P.M.; thence easterly 35 rods to the East Bank of the Shunganunga Creek (old channel); thence northeasterly on said East Bank, 35 rods; thence northwesterly, at right angles to the East Bank, to the Centerline of said creek; thence northeasterly, easterly and southeasterly down the Centerline of said creek and along its meandering to its intersection with the North line of the South Half of the Southwest Quarter of said Section 26; thence east on the North line of the South Half of the Southwest Quarter to the West line of N.E. Kincaid Road; thence southerly, on the West line of N.E. Kincaid Road, 1279.71 feet to the North line of Seward Avenue; thence westerly on the North line of Seward Avenue to the West line of Section 26, also being the East line of Section 27; thence on an assumed bearing of South 88°31'13" West, on a line which is 40.00 feet north of the

South line of said Section 27, 195.00 feet; thence North 00°07'48" East, 869.29 feet; thence North 47°02'26" West, 599.73 feet, to a point on the North line of the South Half of the Southeast Quarter of Section 27; thence west on the North line of the South Half of the Southeast Quarter of Section 27, Township 11 South, Range 16 east of the 6th P.M., 97.87 feet; thence southerly 664.53 feet, to the North line of the South Half of the South Half of the Southeast Quarter of said Section 27; thence westerly 200.00 feet; thence southwesterly 640.00 feet, more or less, to a point 330 feet north of the South line of Section 27; thence westerly, on a line 330 feet north of and parallel with the South line of said Section 27, 750.00 feet, more or less; thence south to the North line of Section 34, Township 11 South, Range 16 east of the 6th P.M.; thence west 464.21 feet to the Northeast corner of the Northwest Quarter of said Section 34; thence southerly, to the Northeast corner of the Southwest Quarter of said Section 34; thence southerly, to the point of beginning.

EXCEPTION I:

Beginning at the intersection of the South line of the Northwest Quarter of Section 21, Township 12 South, Range 15 east with a line which is 25 feet east of the West line of said Northwest Quarter; thence North 88°38'20" East, on the South line of said Northwest quarter, 1947.07 feet, to the Northeast corner of Clarion Lakes Subdivision; thence South 01°21'40" East, on an East line of Clarion Lakes Subdivision, 81.00 feet; thence North 88°38'20" East, 34.88 feet; thence North 86°43'47" East, 180.10 feet; thence North 88°38'20" East, 332.51 feet; thence southeasterly, on a curve concave southwesterly, having a radius measure of 977.50 feet an arc length of 352.28 feet, the chord of which bears South 81°02'12" East, 350.38 feet; thence South 70°42'44" East, 708.74 feet; thence southeasterly, on a curve concave northeasterly, having a radius measure of 790.00 feet and an arc length of 265.94 feet, the chord of which bears South 80°21'22" East, 264.69 feet; thence South 90°00'00" East, 8.57 feet; thence northeasterly, on a curve concave northwesterly, having a radius measure of 1010.00 feet and an arc length of 696.50 feet, the chord of which bears North 70°14'39" East, 682.79 feet; thence North 50°29'18" East, 44.78 feet; thence North 50°29'18" East, 44.78 feet; thence North 54°02'14" East, 334.87 feet; thence South 88°46'43" West, on the South line of the Northeast quarter of said Section 21, to an intersection with a line which is 658.38 feet east of the West line of said Northeast Quarter; thence northerly, on a line which is 658.38 feet east of the West line of said Northeast Quarter, 1322.05 feet; thence westerly, on the South line of Clarion Woods Subdivision No.2, 658.38 feet to the Southeast corner of the North Half of the Northwest Quarter of said Section 21; thence westerly, on the South line of the North Half of said Northwest Quarter, to an intersection with a line which is 25 feet west of the West line of said Northwest Quarter; thence southerly, parallel with the West line of said Northwest Quarter, to the point of beginning.

EXCEPTION II:

Beginning at the Northeast corner of Lot 22, Block A in Kankis Square Subdivision; thence southerly to the Southeast corner of Lot 17, Block A in said subdivision; thence westerly, to the Southwest corner of Lot 1, Block A in said subdivision; thence northerly, to the Northwest corner of Lot 4, Block A in said subdivision; thence easterly, to the point of beginning.

EXCEPTION III:

Beginning at the intersection of a line which is 260.00 feet north of the South line of North Half on the Southwest Quarter of Section 7, Township 12 South, Range 15 east of the 6th P.M. with a line which is 25 feet east of the West line of said Southwest Quarter; thence easterly, parallel with the South line of said North Half, to a point which is 694.00 feet easterly of the West line of said Southwest Quarter; thence northerly, parallel with said West line, 200.00 feet; thence westerly, parallel with the South line of said North Half, to an intersection with a line which is 25 feet east of the West line of said Southwest Quarter; thence southerly 200.00 feet to the point of beginning.

EXCEPTION IV:

Beginning at the intersection of an extension of the North line of S.W. 26th Street in West Indian Hills Subdivision with a line which is 25 feet east of the West line of the Southwest Quarter of Section 7, Township 12 South, Range 15 east of the 6th P.M.; thence easterly to the Southwest corner of Lot 8, Block B in West Indian Hills Subdivision; thence northerly to the Southeast corner of Lot 3, Block B in said subdivision; thence easterly, on the South lines of Lots 3, 2, 1 and the extension of the South line of Lot 1, to an intersection with a line which is 25 feet east of the west line of said Southwest Quarter; thence southerly to the point of beginning.

EXCEPTION V:

Beginning at a point 30 feet north and 465 feet west of the Southeast corner of the Southwest Quarter of Section 32, Township 11 South, Range 15 east of the 6th P.M.; thence west parallel with the South line of said Southwest Quarter, 175 feet; thence north at right angles 205 feet; thence east parallel with the South line of said Southwest Quarter 175 feet; thence south 205 feet to the point of beginning.

B. Outer Corporate Boundary:

Beginning at the Northeast corner of the Northwest Quarter of Section 1, Township 13 South, Range 15 east of the 6th P.M.; thence on an assumed bearing of South 00°16'44" East, on the East line of said Northwest Quarter, 2517.10 feet, to a point 81.00 feet north of the Southeast corner of said Northwest Quarter; thence South 88°25'05" West, 1319.37 feet, to a point

on the West line of the East Half of said Northwest Quarter which is 53.50 feet north of the Southwest corner of the East Half of said Northwest Quarter; thence North 00°13'17" West, 2539.18 feet, to the Northwest corner of the East Half of said Northwest Quarter; thence North 89°22'35" East, 1316.51 feet, to the point of beginning. EXCEPT, a strip of land 20.00 feet in width, in the Northwest Quarter of Section 1, Township 13 south, Range 15 east of the 6th P.M. lying 10.00 feet on each side of the following described centerline: Beginning at a point on the North line of said Northwest Quarter of Section 1, which is 40.00 feet west of the Northeast corner of said Northwest Quarter; thence southerly parallel to the East line of said Northwest Quarter, 2097.40 feet; thence easterly parallel with the North line of said Northwest Quarter, 40.00 feet to the East line of said Northwest Quarter, containing 75.50 acres, more or less.

Also: Beginning at a point which is 40.00 feet south and 40.00 feet east of the Northwest corner of the Northwest Quarter of Section 14, Township 12 south, Range 16 east of the 6th P.M.; thence easterly, parallel with and 40.00 feet south of the North line of said section, 1290.45 feet to the Northwest corner of Lot 1, Block "A", Fair Meadows Subdivision; thence southerly, on the West line of said subdivision, 1278.42 feet to the Southeast corner of Lot 1, Block "D", Thunderbird Subdivision No. 2; thence westerly, on an assumed bearing of South 89°51'12" West, 9.34 feet; thence South 00°20'18" East, 439.60 feet; thence South 89°48'15" West, 1320.00 feet, to a point on the West line of said Northwest Quarter; thence North 00°23'05" West, on the West line of said Northwest Quarter, 440.65 feet; thence North 89°51'12" East, 40.00 feet; thence northerly, parallel with and 40.00 feet east of the West line of said Northwest Quarter, 1278.42 feet, to the point of beginning.

A tract of land in the Southwest Quarter and the Southeast Quarter of Section 7, and in the Southwest Quarter and the Southeast Quarter of Section 8, and the Northeast Quarter and the Southeast Quarter of Section 18, all in Township 13 south, Range 16 east of the 6th P.M., in Shawnee County, Kansas described as:

Commencing at the Northwest corner of said Southwest Quarter of Section 7, thence on an assumed bearing of North 88°07'18" East, on the North line of the Southwest Quarter of Section 7, 213.70 feet to a point on the Easterly Right of Way line of former U.S. Highway No. 75 and the point of beginning; thence continuing North 88°07'18" East, on the North line of said Southwest Quarter, said North line being coincident with the South line of Forbes Field Subdivision, 2268.55 feet, to the Northeast corner of said Southwest Quarter of Section 7; thence continuing North 88°07'18" East, on the North line of said Southeast Quarter of Section 7, said North line being coincident with the South line of Forbes Field Subdivision, 1409.90 feet; thence South 02°04'31" East, parallel with the East line of said Southeast Quarter of

1137 Section 7 and on a boundary line of Forbes Field Subdivision, 650.00 feet;
1138 thence North 88°07'18" East, parallel with the North line of said Southeast
1139 Quarter of Section 7 and on a Southerly line of Forbes Field Subdivision,
1140 1240.00 feet to a point on the East line of said Southeast Quarter of Section
1141 7; thence North 88°27'18" East, parallel with the North line of said
1142 Southwest Quarter of Section 8, and on a Southerly line of Forbes Field
1143 Subdivision, 1147.85 feet; thence South 63°25'07" East, on said Southerly
1144 line of Forbes Field Subdivision, 1670.29 feet, to a point on the East line of
1145 said Southwest Quarter of Section 8; thence continuing South
1146 63°25'07" East, on said Southerly line of Forbes Field Subdivision, 900.22
1147 feet; thence North 86°16'27" East, on said Southerly line of Forbes Field
1148 Subdivision, 1053.80 feet; thence North 55°11'33" East, on said Southerly
1149 line of Forbes Field Subdivision, 910.15 feet to a point on the East line of
1150 said Southeast Quarter of Section 8; thence South 02°32'18" East, on the
1151 East line of said Southeast Quarter, 1318.30 feet to the Southeast corner of
1152 the Southeast Quarter of said Section 8; thence South 88°14'08" West, on
1153 the South line of said Southeast Quarter, 2612.01 feet to the Southwest
1154 corner of said Southeast Quarter; thence South 88°19'21" West, on the
1155 South line of said Southwest Quarter of Section 8, 2621.19 feet to the
1156 Southwest corner of said Southwest Quarter; thence South 02°22'39" East,
1157 on the East line of said Northeast Quarter of Section 18, 2638.05 feet to the
1158 Southeast corner of said Northeast Quarter of Section 18; thence South
1159 02°22'27" East, on the East line of said Southeast Quarter of Section 18,
1160 1318.96 feet, to the Southeast corner of the North Half of said Southeast
1161 Quarter of Section 18; thence South 88°00'15" West on said South line of
1162 the North Half of said Southeast Quarter of Section 18, 2638.04 feet to the
1163 Southwest corner of said North Half of the Southeast Quarter of Section 18;
1164 thence North 02°18'32" West, on the West line of said Southeast Quarter of
1165 Section 18, 1319.82 feet to the Northwest corner of said Southeast Quarter;
1166 thence North 02°18'22" West, on the West line of said Northeast Quarter of
1167 Section 18, 2629.66 feet to the Northwest corner of said Northeast Quarter;
1168 thence South 88°23'32" West, on the South line of the Southwest Quarter of
1169 Section 7, 2146.71 feet, thence on a bearing of North 01°52'44" West,
1170 parallel with the West line of said Southwest Quarter of Section 7, 361.50
1171 feet; thence South 88°23'32" West, parallel with the South line of said
1172 Southwest Quarter of Section 7, 216.30 feet, to the Southeast corner of
1173 Quality Oil Subdivision No. 3; thence North 01°52'44" West, on the East line
1174 of said Quality Oil Subdivision No. 3, and parallel with the West line of said
1175 Southwest Quarter of Section 7, 299.83 feet (300.00 feet plat) to the
1176 Northeast corner of said Quality Oil Subdivision No. 3; thence South
1177 88°23'32" West, on the North line of said Quality Oil Subdivision No. 3, and
1178 parallel with the South line of said Southwest Quarter of Section 7, 94.74
1179 feet, to the Northwest corner of said Quality Oil Subdivision No. 3; thence
1180 North 01°55'59" West, on the Easterly Right of Way line of former US

Highway 75, 906.14 feet; thence North 88°07'18" East, on the Easterly Right of Way line of said highway and parallel with the North line of said Southwest Quarter of Section 7, 9.90 feet; thence North 04°18'42" East, on said Easterly Right of Way line, 288.60 feet; thence North 06°49'42" East, on said Easterly Right of Way line, 813.00 feet to the point of beginning. Contains 689.944 acres, more or less.

A tract of land in the North Half of the Southwest Quarter of Section 9, Township 13 south, Range 16 east of the 6th P.M., in Shawnee County, Kansas, described as:

Beginning at the Southwest corner of said North Half of said Southwest Quarter; thence on an assumed bearing of North 33°02'55" East, on the Southerly line of Forbes Field Subdivision, 484.30 feet; thence North 26°33'23" East, on said Southerly line, 580.54 feet; thence North 02°21'27" East, on said Southerly line, 412.03 feet to a point on the North line of the North Half of said Southwest Quarter; thence North 88°27'10" East, on said North line, 2064.05 feet to the Northeast corner of the North Half of said Southwest Quarter; thence South 00°19'58" East, on the East line of the North Half of said Southwest Quarter, 1325.13 feet to the Southeast corner of the North Half of said Southwest Quarter; thence South 88°31'16" West, on the South line of the North Half of said Southwest Quarter, 2658.73 feet to the point of beginning. Contains 69.093 acres, more or less.

A tract of land in the Southwest Quarter of Section 10, Township 12 south, Range 16 east of the 6th P.M., in Shawnee County, Kansas, described as: Beginning at a point which is 250.00 feet east and 50.00 feet north of the Southwest corner of said Southwest quarter, thence on an assumed bearing of North 89°04'15" East, on the North line of 29th Street, 365.00 feet; thence North 00°00'00" East, 32.64 feet measured (35.00 feet described); thence on a curve to the left, having a radius measure of 146.09 feet measured (146.11 described) an arc distance of 229.48 feet measured (229.51 feet described); thence South 00°00'00" East, 35.28 feet; thence North 56°00'00" West, 264.00 feet; thence South 00°00'00" West, 297.00 feet to the point of beginning. Contains 1.62 acres.

A tract in the South Half of Section 22, Township 12 South, Range 16 east of the 6th P.M., in Shawnee County, Kansas, described as: Beginning at the Southeast corner of the Southeast Quarter of said Section 22; thence on an assumed bearing of North 89°52'00" West on the South line of said Southeast Quarter, 2643.81 feet, to the Southwest corner thereof; thence South 89°54'30" West, on the South line of the East Half of the Southeast Quarter of the Southwest Quarter of said Section 22, 660.93 feet, to the Southwest corner of said East Half; thence North 00°11'08" West on the West line of said East Half, 1319.23 feet, to the Northwest corner of said

East Half; thence North 89°55'34" East, on the North line of said East Half, 661.52 feet, to the Northeast corner of said East Half; thence North 00°09'36" West, on the West line of the Southeast Quarter of said Section 22, 185.85 feet; thence North 14°08'29" East, 588.22 feet; thence North 29°50'56" East, 179.74 feet; thence North 45°33'23" East, 581.97 feet, to a point on the North line of the Southeast Quarter of said Section 22; thence North 89°56'57" East, on the North line of the last said Southeast Quarter, 1998.36 feet, to the Northeast corner of said Southeast Quarter; thence South 00°01'17" East, on the East line of said Southeast Quarter, 2646.58 feet, to the point of beginning.

Contains 174.81 acres, more or less.

The area within the corporate limits is 60.944 square miles, more or less.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed, in accordance with the provisions of K.S.A. 12-518 to file a certified copy of this resolution with the County Clerk, the Register of Deeds office, the State Transportation Engineer and Election Commissioner.

BE IT FURTHER RESOLVED that City of Topeka Resolution No. 8024 is hereby specifically repealed.

ADOPTED and APPROVED by City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 1, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: JIM LANGFORD/KEJ **DOCUMENT #:**
SECOND PARTY/SUBJECT: WEEKLY EXPENDITURES **PROJECT #:**
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 24, 2008, through November 30, 2008, and enumerating said expenditures therein. First and Final Reading.

POLICY ISSUE:

Approve and allow weekly payments of valid operating expenditures, pursuant to Resolution No. 7607.

STAFF RECOMMENDATION:

Adopt as presented.

BACKGROUND:

Pursuant to Resolution No. 7607, adopted on April 12, 2005, which provides authorization to pay for certain expenditures prior to approval by the Council in an expenditure ordinance, the expenditures being authorized by this ordinance have been previously paid, in accordance with established procedures and policies for such payments.

BUDGETARY IMPACT:

Approves expenditures for the period November 24, 2008, through November 30, 2008, in the amount of \$903,245.72.

SOURCE OF FUNDING:

Appropriated funds and fees-for-service revenues of various City departments.

ATTACHMENTS:

[Weekly Expenditures](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte Jr., allowing and approving City expenditures for the period of November 24, 2008, through November 30, 2008, and enumerating said expenditures herein.

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

Section 1. All expenditures made or authorized to be made by issuance of checks or electronic transfers as enumerated herein, are in accordance with City of Topeka Resolution No. 7607.

Section 2. The claims and expenditures listed in Exhibit A, which is on file in the City Council Office and the City Clerk's Office and incorporated herein by said reference, are hereby allowed and approved for payment.

<u>Section 3.</u>	Total for 76 vendor checks written in this period	\$169,667.83
	Total vendor checks voided in this period (net)	(000.00)
	Total electronic transfers to vendors in this period	733,577.89
	Total net payroll to employees this period	000.00
	Total payroll related electronic transfers this period	<u>000.00</u>
	Total for expenditures in this period	<u>\$903,245.72</u>

Section 4. This ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

ATTEST:

William W. Bunten, Mayor

Brenda Younger, City Clerk



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 10, 2008

[Back](#) [Print](#)

DATE: December 16, 2008
CONTACT PERSON: Curtis R. Cox
SECOND PARTY/SUBJECT: Braxton Copley
CATEGORY/SUBCATEGORY 007 Contracts and Amendments / 006 Leases - IRB
CIP PROJECT: No
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #:
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Norton N. Bonaparte, Jr., City Manger, consenting to a leasehold mortgage in connection with a facility financed with multifamily housing refunding revenue bonds concerning a project at Fleming Court Apartments.

This item was added at the meeting.

(The exisitng Lease states that before the Borrower can incur another mortgage with respect to the leased property, the written consent of the City is required. This mortgage will be subordinate to the outstanding Bonds.)

POLICY ISSUE:

None.

STAFF RECOMMENDATION:

Approve the consent.

BACKGROUND:

The Borrower, Hickok Master Limited Partnership, has requested that the City consent to a subordinate leasehold mortgage for both Fleming Court Apartments, located within the Topeka city limits, and to Pinegate Apartments, located within the Merriam, Kansas city limits. The purpose of this action is to refinance existing second and third leasehold mortgages, make interior and exterior improvements to both facilities and to provide funds for other general purposes of the Borrower.

Currently, there are \$3,635,000 of Multi-Family Housing Industrial Revenue Bonds (the "Bonds") outstanding for Fleming Court Apartments. Per Section 7.1 of the Lease Agreement between the City and Hickok Limited Partnership, the Lessee is allowed to "make such additions, modifications and improvements" that the Lessee "may deem necessary or desirable for its business purposes" so long as they do not "adversely affect the operation of the Project or substantially reduce its value."

Item #24

Section 10.1 of the Lease states that before the Borrower can incur another mortgage with respect to the leased

property, the written consent of the City and the Credit Enhancer is required. This mortgage will be subordinate to the outstanding Bonds.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Fleming Park Apartments Lease Agreement](#)

[Resolution](#)

[POS](#)

[Consent](#)

RESOLUTION NO. _____

A RESOLUTION introduced by Norton N. Bonaparte, Jr., City Manger, consenting to a leasehold mortgage in connection with a facility financed with multifamily housing refunding revenue bonds concerning a project at Fleming Court Apartments.

WHEREAS, the City of Topeka, Kansas (the "City"), has previously issued its Multifamily Housing Revenue Refunding Bonds, Series 2000 (Fleming Court Apartments Project), in the aggregate principal amount of \$3,880,000 (the "Bonds"); and

WHEREAS, the proceeds of the Bonds were used to refund the City's outstanding Multifamily Housing Revenue Refunding Bonds, Series 1991A (Fleming Court Apartments Project), the proceeds of which were used to refund the City's Multifamily Housing Revenue Bonds, Series 1985 (Cottonwood Associates Limited Partnership Project) issued for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing and installing a commercial apartment facility located at 1000 – 1108 Fleming Court in the City, including real estate, buildings, improvements and equipment (the "Project"); and

WHEREAS, in connection with the issuance of the Bonds, the City entered into a Lease Agreement dated as of December 1, 2000 (the "Lease"), with Hickok Master Limited Partnership, a Kansas limited partnership (the "Tenant"), wherein the Project is leased by the City to the Tenant; and

WHEREAS, the Tenant has informed the City that it desires to grant a subordinate leasehold mortgage on the Project to M & I Marshall & Ilsley Bank ("M&I") in connection with a debt financing by the Tenant to provide funds to refinance certain existing subordinate leasehold mortgages on the Project, to finance improvements to and maintenance of the Project and for other business purposes of the Tenant; and

WHEREAS, pursuant to Section 10.1 of the Lease, the Tenant may mortgage its interest in the Lease with the prior written consent of the City and the Credit Enhancer, as

defined under the Lease; and

WHEREAS, the Tenant has requested that the City consent to the Tenant's grant of a subordinate leasehold mortgage to M&I for the purposes herein described (the "Leasehold Mortgage"); and

WHEREAS, M & I is the Credit Enhancer on the Bonds, and has provided its written consent to the grant of the Leasehold Mortgage; and

WHEREAS, under the terms of the Lease, the mortgage of the Tenant's interest in the Lease does not relieve the Tenant of its liability to perform its duties and obligations under the Lease.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, AS FOLLOWS:

Section 1. The City hereby consents to the Tenant's grant of the Leasehold Mortgage for the purposes herein described. The City Manager, City Clerk or other officers or agents of the City are authorized to execute such other documents as may be necessary in connection with the City's consent provided such documents are consistent with the intent of this Resolution.

Section 2. Subject to the conditions and prior approvals described herein, the Tenant is hereby authorized to proceed with all matters necessary to accomplish the financing transaction described above.

ADOPTED and APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Buntten, Mayor

ATTEST:

56
57
58

Brenda Younger, City Clerk

PRELIMINARY OFFICIAL STATEMENT DATED DECEMBER __, 2008

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

NEW ISSUE
BOOK ENTRY ONLY

Standard & Poor's: "A/A-1" (expected)
See "RATINGS"

Interest on the Bonds will be includable in gross income for federal and state income tax purposes.

HICKOK MASTER LIMITED PARTNERSHIP

\$4,965,000
Commercial Taxable Variable Rate Demand Bonds
(Hickok Master Limited Partnership)
Series 2008

Dated: Date of Issuance

Price of all Bonds: 100%

Due: December 1, 2038

Hickok Master Limited Partnership, a Kansas limited partnership (the "Company"), will issue its Commercial Taxable Variable Rate Demand Bonds (Hickok Master Limited Partnership) Series 2008 (the "Bonds"), in the principal amount of \$4,965,000. The Bonds will be issued as fully registered Bonds without coupons and, when issued, will be registered in the name of a nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Bonds. Individual purchases of Bonds will be made in book-entry form only and initially in the denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof (while the Bonds are in the Weekly Mode or the Monthly Mode). Purchasers of the Bonds will not receive bond certificates representing their beneficial ownership interests. So long as a nominee of DTC is the registered owner of the Bonds, references herein to the Bondowner or Owner mean such nominee and do not mean the beneficial owner of the Bonds. See "BOOK-ENTRY ONLY SYSTEM." The Bonds will be issued pursuant to a Trust Indenture dated as of December 1, 2008 (the "Indenture"), between the Company and Security Bank of Kansas City, Kansas City, Kansas, as trustee (the "Trustee"). Principal of the Bonds is payable at the Payment Office of the Trustee, as Paying Agent, in Kansas City, Kansas, or at the designated office of any alternate Paying Agent. The Bonds are secured by the pledge of the trust estate under the Indenture, including the Credit Facility and moneys held by the Trustee under the Indenture.

The Bonds initially will be in the Weekly Mode, determined as described in this Official Statement. While the Bonds are in the Weekly Mode interest is payable on the first Business Day of each month, commencing December 1, 2008, to the persons in whose names such Bonds are registered at the close of business on the Business Day immediately preceding the Interest Payment Date, by check or draft mailed by the Trustee (or, under certain circumstances described herein, by electronic transfer in immediately available funds). See "THE BONDS—Interest Rates and Interest Payment Provisions." THIS OFFICIAL STATEMENT DESCRIBES THE BONDS ONLY DURING THE WEEKLY MODE AND WHILE THE BONDS ARE SECURED BY THE CREDIT FACILITY.

The Bonds are subject to optional and mandatory redemption as described herein under the caption "THE BONDS." The Bonds are subject to optional and mandatory tender for purchase as described herein under the caption "TENDER AND PURCHASE OF BONDS." If the Trustee declares an event of default under the Indenture, the Bonds shall cease to bear interest immediately upon the Trustee's declaration. See "THE INDENTURE—Events of Default" and "Acceleration."

Pursuant to and subject to the terms and conditions of an irrevocable direct pay letter of credit (the "Credit Facility") issued by

M&I MARSHALL & ILSLEY BANK

(the "Credit Enhancer"), the Trustee shall be authorized to draw amounts required to pay the principal of the Bonds when due at maturity or upon redemption or acceleration and to pay up to 45 days' interest on the Bonds when due, and to pay the purchase price of Bonds tendered for purchase pursuant to the Indenture to the extent remarketing proceeds are not available for such purpose. The Credit Facility is initially scheduled to expire on December 15, 2013, unless extended or terminated earlier pursuant to its terms. **The Bonds are required to be tendered to the Tender Agent for purchase on the Interest Payment Date that is at least 5 days immediately preceding the termination of the Credit Facility (initially, this Interest Payment Date is December 1, 2013) unless the Credit Facility is extended in accordance with its terms.** See "TENDER AND PURCHASE OF BONDS—Mandatory Tender of Bonds—On Termination Date or Interest Mode Adjustment Date."

Except to the extent paid with drawings under the Credit Facility and moneys on deposit in the funds established under the Indenture, the Bonds will be payable solely from, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Holders of the Bonds, as provided in the Indenture.

THE BONDS AND THE INTEREST THEREON SHALL BE LIMITED OBLIGATIONS OF THE COMPANY PAYABLE SOLELY FROM THE PROCEEDS OF THE BONDS AND OTHER MONEYS PLEDGED THERETO AND HELD BY THE TRUSTEE AS PROVIDED IN THE INDENTURE, AND ARE SECURED BY A TRANSFER, PLEDGE AND ASSIGNMENT OF AND A GRANT OF A SECURITY INTEREST IN THE TRUST ESTATE TO THE TRUSTEE AND IN FAVOR OF THE HOLDERS OF THE BONDS, AS PROVIDED IN THE INDENTURE.

The Bonds are offered when, as and if issued by the Company and accepted by the Underwriters. Certain legal matters will be passed on for the Company by its counsel, Husch Blackwell Sanders LLP, Kansas City, Missouri, for the Credit Enhancer by Polsinelli Shalton Flanigan Suelthaus PC, Kansas City, Missouri, and for the Underwriters by Gilmore & Bell, P.C., Kansas City, Missouri. It is expected that the Bonds will be available for delivery through the facilities of DTC, New York, New York, on or about December 23, 2008.

M&I MARSHALL & ILSLEY BANK

Stern Brothers & Co.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

REGARDING USE OF THIS OFFICIAL STATEMENT

THE BONDS HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE CREDIT ENHANCER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE BONDS HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

No dealer, broker, salesman or other person has been authorized by the Company, the Credit Enhancer or the Underwriters to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations should not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any state in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from the Company, the Credit Enhancer or the Underwriters and other sources which are deemed to be reliable, but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by the Company, the Credit Enhancer or the Underwriters. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Company or the Credit Enhancer since the date hereof.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of that information.

THE BONDS AND THE INTEREST THEREON SHALL BE LIMITED OBLIGATIONS OF THE COMPANY PAYABLE SOLELY FROM THE PROCEEDS OF THE BONDS AND OTHER MONEYS PLEDGED THERETO AND HELD BY THE TRUSTEE AS PROVIDED IN THE INDENTURE, AND ARE SECURED BY A TRANSFER, PLEDGE AND ASSIGNMENT OF AND A GRANT OF A SECURITY INTEREST IN THE TRUST ESTATE TO THE TRUSTEE AND IN FAVOR OF THE HOLDERS OF THE BONDS, AS PROVIDED IN THE INDENTURE. THE BONDS SHALL NOT BE SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR LIEN OR CHARGE UPON, ANY PROPERTY OF THE COMPANY OR ANY OF ITS INCOME OR RECEIPTS EXCEPT THE PROPERTY CONSTITUTING THE TRUST ESTATE. THE PARTNERS (GENERAL AND LIMITED), EMPLOYEES AND AGENTS OF THE COMPANY SHALL NOT BE INDIVIDUALLY LIABLE ON THE BONDS OR FOR ANY UNDERTAKINGS BY THE COMPANY.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on, any of the Bonds or for any claim based thereon or upon any obligation, provision, covenant or agreement contained in the Indenture or any other agreement to which the Company is a party, against any past, present or future director, trustee, officer, official, employee or agent of the Company, as such, either directly or through the Company, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such director, trustee, manager, officer, official, employee or agent as such is expressly waived and released as a condition of

and in consideration for the execution of the Indenture and the issuance of any of the Bonds. Neither the general partner of the Company nor any other person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

NO PROVISION, COVENANT OR AGREEMENT CONTAINED IN THE INDENTURE, THE BONDS, THE BOND PURCHASE AGREEMENT, OR ANY OBLIGATION THEREIN IMPOSED UPON THE COMPANY, OR ANY BREACH THEREOF, SHALL BE CONSTRUED TO IMPOSE UPON THE COMPANY, OR ANY PAST, PRESENT OR FUTURE DIRECTOR, TRUSTEE, GENERAL PARTNER, OFFICER, OFFICIAL, EMPLOYEE OR AGENT OF THE COMPANY, A PECUNIARY LIABILITY OR A CHARGE AGAINST THE GENERAL CREDIT OF THE COMPANY. WITH RESPECT TO ANY ACTION FOR SPECIFIC PERFORMANCE OR ANY ACTION IN THE NATURE OF A PROHIBITORY OR MANDATORY INJUNCTION, NEITHER THE COMPANY NOR ANY OF ITS DIRECTORS, TRUSTEES, GENERAL PARTNERS, OFFICERS, OFFICIALS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY ACTION TAKEN BY THE COMPANY, OR FOR ANY FAILURE TO TAKE ACTION UNDER THE INDENTURE, THE BONDS OR THE BOND PURCHASE AGREEMENT.

NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT, OTHER THAN WITH RESPECT TO THE INFORMATION CONCERNING THE COMPANY CONTAINED UNDER THE CAPTION “THE COMPANY” AND “NO LITIGATION–THE COMPANY” HAS BEEN SUPPLIED OR VERIFIED BY THE COMPANY AND THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

IN CONNECTION WITH THIS OFFERING THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT LEVELS ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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OFFICIAL STATEMENT

HICKOK MASTER LIMITED PARTNERSHIP

\$4,965,000
Commercial Taxable Variable Rate Demand
(Hickok Master Limited Partnership)
Series 2008

INTRODUCTORY STATEMENT

This Official Statement, including the cover page and the Appendices, sets forth certain information in connection with the issuance and sale by Hickok Master Limited Partnership, a limited partnership organized and existing under the laws of the State of Kansas (together with any successors and assigns and any surviving, resulting or transferee entity, the “Company”), of its Commercial Taxable Variable Rate Demand Bonds (Hickok Master Limited Partnership) Series 2008 (the “Bonds”), in the principal amount of \$4,965,000, pursuant to the Company’s Certificate of Limited Partnership dated April 8, 1991, as amended prior to the date hereof, and Amended and Restated Limited Partnership Agreement of Hickok Master Limited Partnership dated March 13, 1998.

The Bonds are being issued under, and will be equally and ratably secured by, the Trust Indenture dated as of December 1, 2008 (the “Indenture”), between the Company and Security Bank of Kansas City, as trustee (the “Trustee”). Under the Indenture, security for the Bonds consists of (1) all right, title and interest in, to and under all payments received on the Credit Facility (including, but not limited to, the right to enforce any of the terms thereof) and all receipts of the Trustee credited under the provisions of the Indenture against said amounts payable, and (2) all other moneys and securities from time to time held by the Trustee under the terms of the Indenture (excluding amounts held in the Purchase Fund).

Brief descriptions of the Company and the Project are contained under “THE COMPANY AND THE PROJECT.”

The Bonds will be secured by an irrevocable direct pay letter of credit (the “Credit Facility,” the form of which is attached as Appendix C) issued by M&I Marshall & Ilsley Bank, a Wisconsin banking corporation (the “Credit Enhancer”).

The Credit Facility will authorize the Trustee to draw on the Credit Enhancer, in accordance with the terms and conditions set forth in the Credit Facility, by drafts, periodically in an amount equal to the interest due on such Bonds and, in the event of the mandatory redemption, tender for purchase by a Bondowner, mandatory tender for purchase or acceleration of the maturity of the Bonds, an amount not to exceed the principal amount or purchase price of such Bonds then outstanding plus interest thereon. The Credit Facility will be in an amount equal to the aggregate principal amount of the Bonds plus not less than 45 days’ interest thereon, calculated initially at 12% per annum, based on a year of 365 days. The Credit Facility will be reduced periodically in accordance with its terms. The Credit Facility has an initial term of five years (expiring December 15, 2013), subject to expiration and termination in accordance with its terms. The Credit Facility is subject to earlier termination in accordance with its terms. See “THE CREDIT FACILITY” and Appendix C.

The Company has the right, under certain conditions described herein, to arrange for an alternate credit facility in substitution for the Credit Facility. See “SECURITY FOR THE BONDS—Alternate Credit Facility.”

Initially, the Bonds will be in the Weekly Mode and will bear interest calculated as described herein under the caption “THE BONDS—Interest Rates and Interest Payment Provisions.” The interest

rate mode for the Bonds is subject to conversion as herein described to a Monthly Mode, Semiannual Mode, Annual Mode or a Multiyear Mode (any mode being herein described as an “Interest Mode”). While the Bonds are in a Weekly Mode or Monthly Mode, Owners will have the option to demand their purchase at a price equal to the principal amount thereof plus accrued interest to the date of purchase as described herein upon notice received by the Trustee acting as Tender Agent not less than seven calendar days prior to the date established for purchase. In the event of the change in the Interest Mode or the proposed delivery of an Alternate Credit Facility with respect to the Bonds (as herein described), the Bonds shall be subject to mandatory purchase except as described herein. See “TENDER AND PURCHASE OF BONDS—Mandatory Tender of Bonds.”

The Bonds are subject to optional and mandatory redemption prior to maturity at the times and in the amounts described herein under the caption “THE BONDS—Optional Redemption” and “THE BONDS—Mandatory Redemption in Event of Condemnation, Deficiency of Title, Fire or Other Casualty.”

The Bonds, while in the Weekly Mode or Monthly Mode, are subject to tender for purchase at the option of the Bondowner. See “TENDER AND PURCHASE OF BONDS—Optional Tender of Bonds.”

The Bonds are subject to mandatory tender for purchase on the Termination Date, the Interest Mode Adjustment Date and the Alternate Credit Facility Date. See “TENDER AND PURCHASE OF BONDS—Mandatory Tender of Bonds.”

THE BONDS ARE BEING OFFERED ON THE BASIS OF THE FINANCIAL STRENGTH OF THE CREDIT ENHANCER, AS ISSUER OF THE CREDIT FACILITY, AND NOT ON THE FINANCIAL STRENGTH OF THE COMPANY.

Brief descriptions of the Bonds and brief summaries of the Credit Facility, the Credit Facility Agreement and the Indenture are set forth below. These descriptions and summaries do not purport to be complete or definitive, and the summaries of the terms of the agreements are qualified by reference to such documents, copies of which may be obtained from the Trustee. Brief descriptions of the Company and the Project are set forth below under “THE COMPANY AND THE PROJECT.”

Certain information with respect to the Credit Enhancer is set forth in Appendix A. The information in Appendix A has been furnished by the Credit Enhancer and neither the Company nor the Underwriters assume any responsibility for the accuracy or completeness thereof.

See Appendix B for the definition of certain capitalized terms used throughout this Official Statement.

THE COMPANY AND THE PROJECT

The Company

Hickok Master Limited Partnership (the “Company”) is a Kansas limited partnership organized in April 1991. The limited partnership agreement was amended and restated in March 1998 pursuant to the Amended and Restated Limited Partnership Agreement dated as of March 13, 1998 (the “Partnership Agreement”). The Partnership Agreement provides that the Company will terminate on December 31, [[2033]]. Timothy W. Hickok (the Company’s General Partner) and the William H. Hickok Trust own

98% of the profit and loss and capital interests in the Company. The primary asset of the Company is its leasehold interests in the Project described below.

The Bonds are a non-recourse obligation of the Company. No partner of the Company will be personally liable with respect to the Bonds or the Company's obligations under the Indenture. Furthermore, except to the extent expressly set forth herein, no representation is made that the Company will have substantial funds available for the Project. Accordingly, no financial statements of the Company or its partners are included in this Official Statement.

The Project

The Project is comprised of an existing housing development located at 9002 W 64th Terrace in the City of Merriam, Johnson County, Kansas, known as the Pinegate East Apartments (the "Pinegate East Apartments"), and an existing housing development located at 1008 SW Fleming Court in the City of Topeka, Shawnee County, Kansas, known as the Fleming Court Apartments (the "Fleming Court Apartments," together with the Pinegate East Apartments, the "Project"). The Company has held leasehold interests (as described below) in both the Pinegate East Apartments and the Fleming Court Apartments since the commencement of construction of each (as described below).

The Company leased the Pinegate East Apartments from the City of Shawnee, Kansas ("Shawnee") pursuant to a Lease Agreement, dated as of December 1, 2000, between the Company, as lessee, and Shawnee, as lessor, in connection with Shawnee's issuance of revenue refunding bonds, the proceeds of which were applied to refinance the Pinegate East Apartments. Under this Lease Agreement the Company agreed to make the rental payments sufficient to timely pay the principal of and interest on Shawnee's revenue refunding bonds. Upon payment in full of the Shawnee revenue refunding bonds, the Company is obligated to exercise an option to purchase the Pinegate East Apartments for a nominal amount. The Pinegate East Apartments were constructed in 1985 and have 23 buildings, plus a clubhouse. The apartments consist of 148 one bedroom units and 74 two bedroom units. The building foundations are slab on grade and the structural framing is wood with vinyl siding. HVAC consists of individual gas heating and electrical air-conditioning. Unit amenities include fully equipped kitchens with built-in dishwashers, oven/range, refrigerator and washer/dryer. One attached garage is included with every unit with the exception of fourteen which have outdoor parking spaces. The clubhouse has an attached office with a fully equipped weight room and two outdoor swimming pools.

The Company leased the Fleming Court Apartments from the City of Topeka, Kansas ("Topeka") pursuant to a Lease Agreement, dated as of December 1, 2000, between the Company, as lessee, and Topeka, as lessor, in connection with Topeka's issuance of revenue refunding bonds, the proceeds of which were applied to refinance the Fleming Court Apartments. Under this Lease Agreement the Company agreed to make the rental payments sufficient to timely pay the principal of and interest on Topeka's revenue refunding bonds. Upon payment in full of the Topeka revenue refunding bonds, the Company is obligated to exercise an option to purchase the Fleming Court Apartments for a nominal amount. The Fleming Court Apartments were constructed in 1987 and have 12 buildings (no clubhouse). The apartments consist of 69 one bedroom units and 47 two bedroom units. The building foundations are slab on grade and the structural framing is wood with vinyl siding. HVAC consists of individual gas heating and electrical air-conditioning. Unit amenities include fully equipped kitchens with built-in dishwashers, oven/range, refrigerator and washer/dryer. Fireplaces are included in the ground level units only. One attached garage is included with every unit. The apartment complex includes one outdoor swimming pool.

SOURCES AND USES OF FUNDS

The table below shows estimated sources and uses of funds in connection with the issuance of the Bonds.

SOURCES OF FUNDS

Net Proceeds of the Bonds [†]	\$4,926,521
Total Sources	<u>\$4,926,521</u>

USES OF FUNDS

Capital Improvements to Pinegate East Apartments	\$ _____
Capital Improvements to Fleming Court Apartments	
Credit Facility and Other Bond Issuance Costs	
Other Company Purposes	_____
Total Uses	<u>\$ _____</u>

[†] The Underwriters are purchasing the Bonds for this amount; from the underwriting discount the Underwriters are paying the fees and expenses of Underwriter's counsel and the rating agency and the Trustee's acceptance fee

CERTAIN BONDOWNERS' RISKS

Purchase of the Bonds involves certain investment risks. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement (including the Appendices to this Official Statement) in order to make a judgment as to whether the Bonds are an appropriate investment. Certain of the risks associated with the purchase of the Bonds are described below. Such risks should not affect the payment of principal of and interest on the Bonds if the Credit Enhancer fulfills the obligations under the Credit Facility. However, upon any inability or refusal of the Credit Enhancer to fulfill the obligations under the Credit Facility, payment of the principal of and interest on the Bonds would be subject to the various risks described below. The following list of possible factors, while not setting forth all the factors which must be considered, contains some of the factors which should be considered prior to purchasing the Bonds. *This discussion of risk factors is not, and is not intended to be, comprehensive or exhaustive.*

1. *Covenant to Pay Bonds.* In the Indenture the Company covenants that it will promptly pay the principal of, premium, if any, and interest on and Tender Price of the Bonds at the places, on the dates and in the manner provided in the Indenture and in the Bonds. The obligation of the Company to make the payments required under the Bonds shall be absolute and unconditional. The Company will pay without abatement, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Company may have or assert against the Trustee or any Bondowner. Notwithstanding anything contained in the Indenture to the contrary, the obligation of the Company under the Bonds shall be an unsecured, limited recourse obligation of the Company, payable solely from revenues generated by the operation of the Project. Any purchaser, assignee or transferee of all or a portion of the Company's interest in the Project shall take such interest subject to the obligations of the Company under the Indenture and shall expressly assume liability for the same.

2. *The Credit Facility.* The Credit Enhancer will issue the Credit Facility which will authorize the Trustee to draw on the Credit Enhancer, in accordance with the terms and conditions set

forth in the Credit Facility, by drafts, periodically in an amount equal to the regular interest due on the Bonds and, in the event of the mandatory redemption, tender for purchase by a Bondowner, mandatory tender for purchase or acceleration of the maturity of the Bonds, an amount not to exceed the principal amount or purchase price of the Bonds then outstanding (the “Principal Portion”) plus up to 45 days’ accrued interest thereon (the “Interest Portion”). The Credit Facility is the Bondowners’ expected source of payment of principal of and interest on the Bonds. Certain information with respect to the Credit Enhancer is included in Appendix A.

3. *Expiration of the Credit Facility; Alternate Credit Facility.* The initial Credit Facility expires on December 15, 2013, subject to extension or earlier termination in certain circumstances as described under the heading “THE CREDIT FACILITY.” If the Credit Facility is not extended or an Alternate Credit Facility is not obtained by the Company the Bonds will be subject to mandatory tender for purchase at the principal amount, without premium. There can be no assurance that the Company or the Credit Enhancer, as applicable, will be able to obtain an extension of the Credit Facility or an Alternate Credit Facility. The Credit Enhancer is under no obligation to extend the Credit Facility beyond the scheduled expiration thereof. See “THE CREDIT FACILITY.” From and after the Alternate Credit Facility Date, the Bonds will be secured by the Alternate Credit Facility. See “SECURITY FOR THE BONDS–Alternate Credit Facility.” The Bonds while in any Interest Mode other than a Multiyear Mode are subject to mandatory tender on the Alternate Credit Facility Date. See “TENDER AND PURCHASE OF BONDS–Mandatory Tender of Bonds–On Alternate Credit Facility Date.”

4. *Credit Enhancer’s Obligations Unsecured.* The ability of the Credit Enhancer to honor draws upon the Credit Facility is based solely upon the Credit Enhancer’s general credit and is not collateralized or otherwise guaranteed by the United States of America or any agency or instrumentality thereof. No provision has been made for replacement of or substitution for the Credit Facility in the event of any deterioration in the financial condition of the Credit Enhancer. None of the Company or the Credit Enhancer assumes any liability to any purchaser of the Bonds as a result of any deterioration of the financial condition of the Credit Enhancer. Upon any insolvency of the Credit Enhancer, any claim by the Trustee against the Credit Enhancer or any receiver or conservator of the Credit Enhancer would rank on a parity with other general creditors of the Credit Enhancer.

5. *Default by the Company under the Credit Facility Agreement.* No representation or assurance can be made that sufficient rental income will be realized by the Company in amounts necessary to make the payments required under the Credit Facility Agreement. If the Company is unable to make the payments required under the Credit Facility Agreement or otherwise commits an Event of Default under the Credit Facility Agreement, the Credit Enhancer will have the right to terminate the Credit Facility and direct the Trustee to accelerate the Bonds or conduct a mandatory purchase of the Bonds pursuant to the Indenture. See “THE INDENTURE–Acceleration” and “–Mandatory Purchase” and “THE CREDIT FACILITY AGREEMENT.”

6. *Limitation on Enforcement of Remedies.* Enforcement of the remedies under the Indenture and the Credit Facility may be limited or restricted by laws relating to bankruptcy and insolvency, and rights of creditors under application of general principles of equity, and may be substantially delayed in the event of litigation or statutory remedy procedures. The various legal opinions to be delivered concurrently with the issuance and delivery of the Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by principles of equity and by bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

7. *Suitability of Investment.* An investment in the Bonds involves a certain degree of risk. The interest rate borne by the Bonds is intended to compensate the investor for assuming this element of risk. Prospective investors should carefully examine this Official Statement, including the Appendices hereto, and their ability to bear the economic risk of such an investment, and then determine whether or not the Bonds are an appropriate investment for them.

8. *General Factors Affecting the Credit Enhancer.* The Credit Enhancer is subject to regulation and supervision by the Wisconsin Banking Commission, the Federal Deposit Insurance Corporation and other regulatory bodies. New regulations could impose restrictions upon the Credit Enhancer that would restrict its ability to respond to competitive pressures. In the recent past, increased regulatory efforts have imposed new capital requirements upon the Credit Enhancer. Various other legislative or regulatory changes could dramatically impact the banking industry as a whole and the Credit Enhancer specifically. The banking industry is highly competitive in many of the markets in which the Credit Enhancer operates. Such competition directly impacts the financial performance of the Credit Enhancer. Any significant increase in such competition could adversely impact the Credit Enhancer.

Prospective purchasers of the Bonds should evaluate the financial strength of the Credit Enhancer based upon the information contained and referenced in Appendix A, and should not rely upon any governmental supervision by any regulatory entity.

9. *General Factors Affecting the Company.* No representation or assurance can be made that profits will be realized by the Company in amounts necessary to make the payments required under the Credit Facility Agreement or to make other payments in amounts sufficient to pay the principal of and interest on the Bonds in the event the Credit Enhancer fails to honor draws under the Credit Facility. Future revenues and expenses are subject to, among other things, the capabilities of the Company and future economic and other conditions that are unpredictable.

10. *Early Redemption or Mandatory Tender.* Pursuant to the terms of the Indenture, the Bonds are subject to redemption or mandatory tender for purchase prior to maturity (see “THE BONDS—Optional Redemption” and “—Extraordinary Redemption” and “TENDER AND PURCHASE OF BONDS—Mandatory Tender of Bonds”). Under those circumstances, a Bondowner whose Bonds are called for early redemption may not have the opportunity to hold those Bonds for a time period consistent with such Bondowner’s original investment intentions. Any person who purchases a Bond should consider that the redemption or purchase price for the redeemed or tendered Bonds may be less than the market price of the Bonds at such time.

[[Directed Optional redemptions by the Credit Enhancer. See “THE CREDIT FACILITY AGREEMENT—Deposits by Company; Optional Redemption of Bonds.”]]

11. *Secondary Markets and Prices.* Except with respect to an optional or mandatory tender of the Bonds (see “TENDER AND PURCHASE OF BONDS”), neither the Company nor the Credit Enhancer will be obligated to repurchase any of the Bonds, and no representation is made concerning the existence of any secondary market for the Bonds. No assurance can be given that any secondary market will develop following the completion of the offering of the Bonds.

THE BONDS

General Description

The Bonds are issuable only as fully registered Bonds without coupons. The Bonds are issuable in Authorized Denominations. The Owner of any Bond or Bonds may surrender the same in exchange for an equal aggregate principal amount of Bonds in any Authorized Denomination in the manner, subject to the conditions and upon the payment of the charges provided in the Indenture. No service charge shall be made for any transfer or exchange of Bonds, but the Trustee or the Company may require payment of any tax or governmental charge in connection therewith.

Interest Rates and Interest Payment Provisions

Initial Mode and Interest Rates. The Bonds shall initially be in the Weekly Mode. Interest accrued on the Bonds during each Interest Period shall be paid on the next succeeding Interest Payment Date and, while the Bonds are in a Weekly Mode or Monthly Mode, shall be computed on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed.

Determination of Interest Rates. M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin, has been appointed the remarketing agent (the "Remarketing Agent"). The Remarketing Agent shall determine the interest rate for the Bonds for the Rate Period commencing with each Rate Adjustment Date to be the lowest rate which, in the best judgment of the Remarketing Agent, on the Rate Determination Date, would result in the market value of the Bonds on the Rate Adjustment Date being equal to 100% of their principal amount. In determining such interest rate, the Remarketing Agent shall have due regard for general financial conditions and such other conditions as, in the judgment of the Remarketing Agent, have a bearing on the interest rate on the Bonds, including the then prevailing market conditions, the yields at which comparable securities are then being sold and the tender provisions applicable thereto during the forthcoming Rate Period. Each determination of the interest rate for the Bonds, as provided herein, shall be conclusive and binding upon the Bondowners, the Company, the Tender Agent, the Remarketing Agent, the Credit Enhancer and the Trustee. Upon request, the Remarketing Agent shall give the Company, the Trustee, the Credit Enhancer or the Tender Agent Immediate Notice of the interest rate on the Bonds at any time.

On each Rate Determination Date, the Remarketing Agent will determine the interest rate which the Bonds shall bear during the Rate Period following such Rate Determination Date. The interest rate so determined shall be effective on the Rate Adjustment Date. Promptly after each Rate Determination Date, the Remarketing Agent shall give written notice by facsimile or electronic mail of the interest rate so set to the Trustee and the Company.

Alternative Rate Calculation. If for any reason the interest rate for the Bonds is not or cannot be established as described in the preceding paragraphs, or is held invalid or unenforceable by a court of law, the Bonds shall immediately convert to a Weekly Mode, anything in the Indenture to the contrary notwithstanding. The interest rate then shall be a rate equal to the lesser of (i) London Interbank Offered Rates (1 month) as reported in *The Wall Street Journal* on the Rate Determination Date and, if that rate is not then available, the last interest rate set for Bonds in the Weekly Mode, or (ii) the Maximum Rate.

Changes in Interest Modes. The Interest Mode for the Bonds may be changed from time to time at the option of the Company, with the prior written consent of the Credit Enhancer exercised as described under this caption, to another Interest Mode selected by the Company, on any date on which the Bonds are subject to optional redemption at a redemption price equal to the principal amount thereof, plus

accrued interest, without premium. The Company may exercise such option at any time by giving written notice not more than 60 nor less than 35 days prior to the Interest Mode Adjustment Date to the Trustee, the Tender Agent, the Remarketing Agent and the Credit Enhancer stating its election to convert the Interest Mode for the Bonds to another Interest Mode, which notice shall specify the new Interest Mode and the Interest Mode Adjustment Date. Such Interest Mode Adjustment Date shall be a Rate Adjustment Date for the Bonds in such new Interest Mode. Upon the exercise of such option by the Company and upon the Trustee's receipt of the prior written consent of the Credit Enhancer to the exercise of such option, the Trustee shall send an Interest Mode Adjustment Notice to each Owner of Bonds.

The change in the Interest Mode will occur if:

- (i) the Trustee has received, prior to sending the Interest Mode Adjustment Notice, an Opinion of Counsel stating that the change in the Interest Mode is authorized and permitted by the Indenture and such Opinion of Counsel is confirmed as of the Interest Mode Adjustment Date,
- (ii) the Credit Enhancer has given its prior written consent to the change in the Interest Mode and shall have fully and timely made any payment due under the Credit Facility in connection with the related Interest Mode Adjustment Date pursuant to the Indenture,
- (iii) the Trustee has received a Credit Facility (which may be an amendment or replacement of the current Credit Facility from the current Credit Enhancer) that includes coverage for interest consisting of (A) 45 days plus the number of days for the reinstatement of the interest component of the Credit Facility (calculated at the Maximum Rate on the basis of a year of 365 or 366 days) if the Bonds are in a Weekly Mode or Monthly Mode, or (B) 195 days plus the number of days for the reinstatement of the interest component of the Credit Facility (calculated at the highest rate the Bonds may bear during the remaining term of the current Credit Facility on the basis of a year of 360 days and twelve 30-day months) if the Bonds are in any other Interest Mode, or as otherwise required by the Rating Agency,
- (iv) the Trustee has received written evidence from the Rating Agency as to the rating on the Bonds to be in effect on the Bonds as of the Interest Mode Adjustment Date, and
- (v) with respect to a change to a Multiyear Mode, the Termination Date for the Credit Facility in effect on the Interest Mode Adjustment Date must be no earlier than the next Rate Adjustment Date or, if the interest rate is fixed to maturity, the first optional redemption date of the Bonds.

If the conditions to a change in the Interest Mode are not met by the Interest Mode Adjustment Date:

- (i) the Bonds will remain in, or be changed to, the Weekly Mode on the proposed Interest Mode Adjustment Date, without any action by any party;
- (ii) the Bonds will be subject to mandatory tender on the proposed Interest Mode Adjustment Date; and
- (iii) the Remarketing Agent will remarket the Bonds in the Weekly Mode on the proposed Interest Mode Adjustment Date.

Method and Place of Payment. Except as otherwise provided in the Indenture, the principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. Principal and premium, if any, shall be payable by check or draft at the Payment Office of the Trustee or at the office of any alternate Paying Agent, and, with respect to the Tender Price, at the Payment Office of the Tender Agent, upon presentation and surrender of such Bonds. Payment of interest on any Bond shall be made by check or draft of the Trustee mailed to the person in whose name such Bond is registered on the Bond Register as of the close of business of the Trustee on the Record Date for such Interest Payment Date, except that interest not duly paid or provided for when due shall be payable to the person in whose name such Bond is registered at the close of business on the Business Day immediately preceding the date of payment of such defaulted interest. In the case of an interest payment to any Owner of \$1,000,000 or more in aggregate principal amount of Bonds as of the close of business of the Trustee on the Record Date for a particular Interest Payment Date or in the case of the purchase from an Owner of \$1,000,000 or more in aggregate principal amount of Bonds on the Tender Date, payment of interest or the Tender Price, as applicable, is payable by electronic transfer in immediately available federal funds pursuant to the written instructions from any Owner of \$1,000,000 or more in aggregate principal amount of Bonds. The electronic transfer instructions must include the name, address and ABA routing number of the bank (located in the continental United States) and the account name and number to which payment is to be credited and acknowledge an electronic transfer fee payable by the Owner. Written notice must be given by such Owner to the Trustee not less than 15 days prior to a Record Date and, with respect to payment of the Tender Price, which written notice accompanies the Owner's Notice of Election to Tender Bonds or is otherwise provided by the Owner three days prior to the Tender Date. All checks or drafts for the payment of the principal and redemption price of and interest on the Bonds shall include or have enclosed therewith the CUSIP number and appropriate payment amount for each CUSIP number. The Trustee shall use its best efforts to include the CUSIP number and appropriate payment amount for each CUSIP number with respect to all electronic transfers of the payment of the principal and redemption price of and interest on the Bonds.

If any Bondowner fails to provide a correct taxpayer identification number to the Trustee or the Tender Agent, the Trustee or the Tender Agent may impose a charge against such Bondowner sufficient to pay any governmental charge required to be paid as a result of such failure and such amount may be deducted by the Trustee or the Tender Agent from amounts otherwise payable to such Bondowner under the Indenture or under the Bonds.

Registration, Transfer and Exchange of Bonds

Under the Indenture, the Trustee is appointed Bond Registrar and will keep the Bond Register at its Payment Office. If the Trustee is not also acting as the Tender Agent, then no later than the second Business Day following each Record Date the Trustee shall send a copy of the Bond Register to the Tender Agent by first-class mail.

Any Bond may be transferred only upon the Bond Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the registered Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. Subject to the limitations on transfer and exchange described below, upon any such transfer, the Company shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new Bond or Bonds, registered in the name of the transferee, of any Authorized Denomination.

Any Bonds, upon surrender thereof at the Payment Office of the Trustee, together with an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as

shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of the Bonds of any Authorized Denomination.

In all cases in which Bonds shall be exchanged or transferred under the Indenture, the Company has agreed to execute and the Trustee has agreed to authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of the Indenture. The Trustee will promptly cancel all Bonds surrendered in any such exchange or transfer.

The Company or the Trustee may make a charge against each Bondowner requesting a transfer or exchange of Bonds for every such transfer or exchange of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such transfer or exchange, the costs of printing, if any, each new Bond issued upon any transfer or exchange and the reasonable expenses of the Company and the Trustee in connection therewith, and such charge shall be paid before any such new Bond shall be delivered.

At reasonable times and under reasonable regulations established by the Trustee, the Bond Register may be inspected and copied by the Company, the Credit Enhancer or by the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

The person in whose name any Bond shall be registered on the Bond Register shall be deemed and regarded as the absolute Owner of such Bond for all purposes, and payment of or on account of the principal of and redemption premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or such Owner's attorney or legal representative (except that any such payments on Pledged Bonds shall be made to the Credit Enhancer). All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Limitation on Transfer and Exchange

If an Alternate Credit Facility is provided, the Indenture imposes limitations upon the transfer or exchange of Bonds unless the Company, the Trustee and the Credit Enhancer have received an Opinion of Counsel in form and substance reasonably satisfactory to the Company, the Trustee and the Credit Enhancer, that the Bonds and the Alternate Credit Facility are exempt from registration under the Securities Act of 1933 or any applicable state securities laws.

Mutilated, Lost, Stolen, Destroyed or Undelivered Bonds

If any Bond is mutilated, lost, stolen or destroyed, the Company shall execute and the Trustee shall authenticate and deliver a new Bond of like date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity to hold harmless the Company and the Trustee, in form and substance satisfactory to the Trustee. In the event any such Bond has matured, is about to mature or been called for redemption, instead of issuing a substitute Bond the Paying Agent may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the Company and the Trustee may require the payment of any amount by the Bondowner sufficient to reimburse the Company and the Trustee for any tax or other

governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

If there are Undelivered Bonds, the Trustee shall authenticate and deliver, with such delivery to occur at the Payment Office of the Trustee to the new Owner or Owners thereof a new Bond or Bonds of like amount in Authorized Denominations registered in the name of the new Owner or Owners thereof. It shall be the duty of the Tender Agent to hold the moneys received from the remarketing of a replacement Bond issued in place of an Undelivered Bond, without liability for interest thereon, for the benefit of the former Bondowner, who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature under the Indenture or with respect to the Undelivered Bond and so long as the moneys held by the Tender Agent equal the full amount due on such Bond on the Tender Date, whether from such remarketing or payment under the Credit Facility, such Bond shall thereafter no longer be secured by the Indenture or the Credit Facility (except for such moneys so held). Such moneys shall be held by the Tender Agent in the Undelivered Bond Account, along with any other moneys deposited in the Undelivered Bond Account pursuant to the Indenture, and no moneys held in the Undelivered Bond Account shall be invested.

Optional Redemption

Optional Redemption of Bonds Not in Multiyear Mode. Bonds (other than Bonds in a Multiyear Mode) are subject to redemption and payment prior to maturity, at the option of and upon the Company's Written Request with the prior written consent of the Credit Enhancer, in whole on any date or in part in the principal amount of \$25,000 or integral multiples of \$5,000 in excess thereof on any Interest Payment Date, at the principal amount thereof, without premium, plus accrued interest to the redemption date, from proceeds of a payment under the Credit Facility.

Optional Redemption of Bonds in Multiyear Mode. The Bonds in a Multiyear Mode are subject to redemption and payment prior to maturity, at the option of and upon Company's Written Request with the prior written consent of the Credit Enhancer, in whole on any date or in part on any Interest Payment Date, in Authorized Denominations, at the redemption prices (expressed as percentages of the principal amount) set forth in the Indenture, plus accrued interest to the redemption date, from proceeds of a payment under the Credit Facility (except with respect to premium, if any) as provided in the Indenture.

The Company may deliver an alternate optional redemption schedule for the Bonds to the Trustee on or prior to the Interest Mode Adjustment Date with respect to the Multiyear Mode setting forth redemption dates and redemption prices, which schedule shall be determined by the Remarketing Agent as the terms necessary for the Remarketing Agent to remarket the Bonds at par as of the Interest Mode Adjustment Date.

Any provision in the Indenture to the contrary notwithstanding, the notice of redemption shall state that it is conditioned upon receipt by the Trustee of sufficient Available Moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if either (i) by no later than the scheduled redemption date, sufficient Available Moneys to redeem the Bonds are not on deposit with and available to the Trustee, or (ii) the Borrower, with the written consent of the Credit Enhancer, rescinds the redemption notice on or prior to the scheduled redemption date, provided that if the Bonds are not then secured by a Credit Facility or the Bonds are not rated as provided in the Indenture, it shall not be a requirement for the giving of notice of redemption of the Bonds that Available Moneys be deposited with the Trustee or that the Credit Enhancer commits in writing to make a payment under the Credit Facility, and such redemption notice may be conditioned upon the availability of funds to redeem the Bonds on the redemption date.

Mandatory Redemption in Event of Condemnation, Deficiency of Title, Fire or Other Casualty

The Bonds are subject to redemption, at the option of and upon written instructions from the Company, with the prior written consent of the Credit Enhancer, in whole or in part on the earliest practicable date for which notice can be given, upon the occurrence of a condemnation, loss of title or casualty loss to the Project, from proceeds of a payment under the Credit Facility, at the principal amount thereof, without premium, plus accrued interest to the redemption date.

Selection of Bonds to be Redeemed

When less than all of the Outstanding Bonds are to be redeemed and paid prior to maturity pursuant to the Indenture, the Bonds or portions of Bonds to be redeemed shall be selected by the Trustee, in such equitable manner as it may determine, in integral multiples of \$5,000 (except that no Bond may be redeemed in part if the principal amount thereof to remain Outstanding following such partial redemption is not itself an Authorized Denomination); provided that Bonds shall be redeemed in the following order of priority: (1) Pledged Bonds; (2) Tendered Bonds; and (3) any other Bonds. The Trustee shall give written notice to the Remarketing Agent of the Bonds so selected for redemption. For purposes of this paragraph, in connection with the payment of Company Bonds and Pledged Bonds, the Trustee is deemed to know the principal amount of Pledged Bonds only if the Trustee has received written notice to that effect.

In the case of a partial redemption of Bonds when Bonds of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each unit of face value of \$5,000 in excess of the Authorized Denomination shall be treated as though it was a separate Bond of \$5,000. If one or more, but not all, of the \$5,000 units of principal amount in excess of the minimum Authorized Denomination represented by any Bond are selected for redemption, then upon notice of intention to redeem such unit or units, the Owner of such Bond or such Owner's attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than the minimum Authorized Denomination shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the unit or units of principal amount called for redemption and shall cease to accrue interest on such amount.

Notice of Redemption; Effect of Call

Notice of Redemption. Subject to the possible conditional notice for an optional redemption described above (see “–Optional Redemption–Notice of Optional Redemption Conditional” above), unless waived by any Owner of Bonds to be redeemed, notice of the call of Bonds in the Weekly Mode or the Monthly Mode for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Company, to the Remarketing Agent, the Credit Enhancer, the Company and the Owner of each Bond to be redeemed at the address shown on the Bond Register by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least 15 days and not more than 30 days prior to the redemption date; provided, however, that failure to give such notice by mailing as aforesaid to any Bondowner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any Bonds. As provided in the Indenture, any notice of redemption shall state the date and place of redemption (and in the case of the redemption of a portion of

any Bond, the numbers of the Bonds or portions of Bonds to be redeemed and the principal amount thereof being redeemed), the redemption prices and that interest will cease to accrue from and after the redemption date. The Trustee shall not give the notice described above with respect to redemption of the Bonds described herein under the captions “THE BONDS–Optional Redemption” or “THE BONDS–Mandatory Redemption in Event of Condemnation, Deficiency of Title, Fire or Other Casualty” without the prior written consent of the Credit Enhancer.

Notice of Redemption for the Bonds in an Interest Mode other than a Weekly or Monthly Mode shall be given as provided in the Indenture.

All official notices of redemption (regardless of the Interest Mode of the Bonds) shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) if less than all Outstanding Bonds are to be redeemed, the identification, number, maturity date and, in the case of partial redemption of any Bond, the respective principal amounts of the Bonds to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Payment Office of the Trustee; and
- (6) that the Bonds must be endorsed in blank.

In addition to the notice described above, further notice shall be given by the Trustee on behalf of the Company as set forth in the Indenture to certain securities depositories and national information services, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

Notice of Optional Redemption Conditional. Any provision in the Indenture to the contrary notwithstanding, the notice of an optional redemption of Bonds shall state that it is conditioned upon receipt by the Trustee of sufficient Available Moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if either (i) by no later than the scheduled redemption date, sufficient Available Moneys to redeem the Bonds are not on deposit with the Trustee, or (ii) the Credit Enhancer rescinds the redemption notice on or prior to the scheduled redemption date.

Effect of Call for Redemption. On or prior to the date fixed for redemption, Available Moneys available solely for such redemption in accordance with the requirements of the Indenture shall be deposited with the Trustee to pay the principal of the Bonds called for redemption, accrued interest thereon to the redemption date and the redemption premium, if any, thereon. Upon the happening of the above conditions, and notice having been given as provided in the Indenture, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys (which must be Available Moneys when required by the optional and

mandatory redemption provisions of the Indenture) sufficient for the payment of the redemption price of the Bonds called for redemption are on deposit at the place of payment at the time fixed for such redemption, and shall no longer be entitled to the protection, benefit or security of the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

TENDER AND PURCHASE OF BONDS

Optional Tender of Bonds

General. While the Bonds are in a Weekly Mode or Monthly Mode, the Owner of any Bond has the right to have such Bond purchased in whole or in part on the dates specified in succeeding section at the Tender Price. Any purchase in part shall be in a principal amount equal to an Authorized Denomination and after such purchase in part such Owner shall retain a principal amount equal to an Authorized Denomination. An Owner's exercise of the option to have such Bond purchased is irrevocable and binding on the Owner and cannot be withdrawn. If any Owner of Bonds shall fail to deliver the Bonds described in the Owner's Notice of Election to Tender Bonds in accordance with the provisions of the Indenture, such Bonds shall constitute Undelivered Bonds. Bonds in the place of such Undelivered Bonds shall be executed, authenticated and delivered as provided in the Indenture and such replacement Bonds may be offered and sold by the Remarketing Agent in accordance with the Indenture and the Remarketing Agreement.

Notice of Tender by Bondowners. In order for any Bond, or portion thereof, to be purchased on the Tender Date by the Tender Agent on the demand of the Owner, the Owner must deliver to the Tender Agent on a Business Day at its Administrative Office of an irrevocable written notice in the form of the Notice of Election to Tender Bonds which states (A) the principal amount and number of such Bond (and the portion of such Bond to be purchased if less than the full principal amount is to be purchased), the name and the address of such Owner and the taxpayer identification number, if any, of such Owner and (B) that such Bond, or portion thereof, is to be purchased on a day (which shall be the Tender Date), which day will be a Business Day which is at least seven, but not more than 30 calendar days after the receipt by the Tender Agent of such Notice of Election to Tender Bonds. Such Notice of Election to Tender Bonds shall be deemed received on a Business Day if received by the Tender Agent no later than 3:00 p.m., New York Time, on such Business Day. Any Notice of Election to Tender Bonds received by the Tender Agent after 3:00 p.m., New York Time, shall be deemed received on the next succeeding Business Day.

Any Owner of Bonds who has demanded purchase of its Bond, or portion thereof, shall deliver such Bond (with an appropriate transfer of registration form executed in blank, together with a signature guaranty) to the Tender Agent at its Payment Office prior to 10:30 a.m., New York Time, on the Tender Date specified in the aforesaid written notice.

Mandatory Tender of Bonds

On Termination Date or Interest Mode Adjustment Date. All Bonds are required to be tendered to the Tender Agent for purchase on the Termination Date or an Interest Mode Adjustment Date. Any Bondowner that is required to tender its Bonds as described in this paragraph shall be required to tender its Bonds to the Tender Agent for purchase at its Payment Office prior to 10:30 a.m., New York Time, on the Termination Date or the Interest Mode Adjustment Date, as applicable. The failure to tender Bonds on any such date is the equivalent of a tender, and such Bonds shall be converted to Undelivered Bonds and replacement Bonds shall be executed, authenticated and delivered in the place of such Undelivered Bonds

as provided in the Indenture and such replacement Bonds may be offered and sold by the Remarketing Agent in accordance with the Indenture and the Remarketing Agreement.

On Alternate Credit Facility Date. All Bonds are required to be tendered to the Tender Agent for purchase on an Alternate Credit Facility Date. Any Bondowner that is required to tender its Bonds as described in this paragraph shall be required to tender its Bonds to the Tender Agent for purchase at its Payment Office prior to 10:30 a.m., New York Time, on the Alternate Credit Facility Date. The failure to tender Bonds on any such date is the equivalent of a tender, and such Bonds shall be converted to Undelivered Bonds and replacement Bonds shall be executed, authenticated and delivered in the place of such Undelivered Bonds as provided in the Indenture and such replacement Bonds may be offered and sold by the Remarketing Agent in accordance with the Indenture and the Remarketing Agreement.

On Rate Adjustment Date During Semiannual Mode, Annual Mode and Multiyear Mode. While the Bonds are in a Semiannual Mode, Annual Mode or Multiyear Mode, all Bonds are required to be tendered to the Tender Agent for purchase on each Rate Adjustment Date. Any Bondowner required to tender Bonds under this section shall tender Bonds to the Tender Agent for purchase at its Payment Office prior to 10:30 a.m., New York Time, on the Rate Adjustment Date. The failure to tender its Bonds on any such date is the equivalent of a tender and such Bonds shall be converted to Undelivered Bonds and Replacement Bonds shall be executed, authenticated and delivered in the place of such Undelivered Bonds as provided in the Indenture and such Replacement Bonds may be offered and sold by the Remarketing Agent in accordance with the Indenture and the Remarketing Agreement.

Mandatory Tender in Lieu of Acceleration on Default. All Bonds are subject to mandatory tender for purchase on the Mandatory Purchase Date from the Bondowners by the Trustee for the account of the Credit Enhancer in lieu of acceleration of the Bonds upon a default in the payment of principal of, Tender Price or interest on the Bonds and the acceleration of the Bonds, upon the failure of the Credit Enhancer to reinstate the interest portion of the Credit Facility within the time period provided for in the Credit Facility or the mandatory purchase of Bonds upon a default by the Company under the Credit Facility Agreement. Upon receipt of notice from the Credit Enhancer directing the Trustee to purchase the Bonds and setting the Mandatory Purchase Date, which shall be a Business Day which is at least three and no more than five calendar days after the receipt by the Trustee of such notice, the Trustee shall immediately request a payment under the Credit Facility to be received no later than 2:00 p.m., New York Time, on the Mandatory Purchase Date, and shall also send notice to the Bondowners of the mandatory purchase. On the Mandatory Purchase Date, the Tender Agent shall pay to the Bondowners the purchase price for the Bonds, which shall be an amount equal to 100% of the principal amount of any Bond tendered or deemed tendered plus accrued and unpaid interest thereon to the Mandatory Purchase Date. Any Bondowner required to tender Bonds as described in this paragraph shall tender its Bonds to the Tender Agent for purchase at its Payment Office prior to 10:30 a.m., New York Time, on the Mandatory Purchase Date. The failure to tender Bonds on any such date is the equivalent of a tender and such Bonds shall be converted to Undelivered Bonds and replacement Bonds shall be executed, authenticated and delivered in the place of such Undelivered Bonds.

Notice of Mandatory Tender. The Trustee shall give notice to Bondowners of the mandatory tender for purchase of Bonds not less than 20 or more than 30 calendar days prior to the mandatory Tender Date (not less than three days or more than 10 calendar days for a mandatory tender in lieu of acceleration on default).

Failure to Give Notice. Failure by the Trustee to give any notice as described above, any defect therein or any failure by any Bondowner to receive any such notice shall not in any way change such Owner's obligation to tender the Bonds for purchase on any mandatory Tender Date.

No Remarketing. No Bond purchased on the Termination Date pursuant to the Indenture shall be remarketed on any date on or prior to the delivery of an Alternate Credit Facility. No Bond purchased on the Mandatory Purchase Date pursuant to the Indenture shall be remarketed until the Credit Enhancer has given written notice to the Trustee of the written rescission of the notice from the Credit Enhancer.

Irrevocability of Elections; Return of Improperly Completed Documents

The Tender Agent, to whom a Notice of Election to Tender Bonds has been delivered, shall determine whether such Notice has been properly completed and such determination shall be binding on the Owner of such Bond. Any election by a Bondowner to exercise the option to have its Bond or Bonds purchased, shall be irrevocable upon delivery to the Tender Agent of the Notice of Election to Tender Bonds (together with, if required at the time of delivery of such notice, the Tendered Bonds). The Tender Agent shall promptly return any incomplete or improperly completed Notice of Election to Tender Bonds (together with, if required, the Tendered Bonds) to the Person or Persons submitting such documents.

Purchase of Tendered Bonds

Tendered Bonds shall be purchased from the Owners thereof on the Tender Date at the Tender Price which shall be payable solely from the following sources in the order of priority listed:

- (1) Remarketing Proceeds;
- (2) proceeds of a payment under the Credit Facility to purchase the Tendered Bonds;
- (3) Available Moneys from any other source; and
- (4) moneys from any other source.

On each Tender Date, all Bonds purchased with Remarketing Proceeds shall be delivered and registered as directed by the Remarketing Agent pursuant to the Indenture. The Tender Agent shall pay the Tender Price for each Tendered Bond prior to the Tender Agent's close of business on the Tender Date only after receipt of such Bond, properly endorsed in blank, together with a signature guaranty (together, with, in the case of any bond with a specified Tender Date prior to an Interest Payment Date and after the related Record Date, a due-bill in form satisfactory to the Tender Agent for interest due on such Bond on such Interest Payment Date). Payment of the Tender Price of any Bond tendered for purchase shall be made: (1) by check or draft mailed to the Owner thereof at the Owner's address as it appears on the Bond Register or at such other address as is furnished to the Tender Agent in writing by such Owner; or (2) in the case of the purchase from an Owner of \$1,000,000 or more in aggregate principal amount of Bonds, by electronic transfer of immediately available federal funds to such Owner upon written notice from such Owner which written notice accompanies such Owner's Notice of Election to Tender Bonds. The electronic transfer instructions must describe the name, address and ABA routing number of the bank (located in the continental United States) and the account name and number to which payment is to be credited and acknowledge an electronic transfer fee payable by the Owner.

The Trustee shall take the following actions with respect to Tendered Bonds:

- (1) with respect to Bonds which have been remarketed and for which the Tender Agent has received payment, on the written advice of the Remarketing Agent, authenticate said

Bonds in the names of the purchasers thereof and in the appropriate denominations, and deliver said Bonds to the Remarketing Agent upon the Tender Agent's receipt of payment therefor;

(2) with respect to Tendered Bonds which have not been remarketed and which are to be purchased with the proceeds of a draw on the Credit Facility, register said Bonds as owned by the Company and pledged to the Credit Enhancer pursuant to the Bond Pledge Agreement and hold such Bonds as agent and bailee for the Credit Enhancer in accordance with the terms of the Bond Pledge Agreement; and

(3) with respect to all Bonds that have been physically tendered, cancel such certificates.

Notwithstanding anything in the Indenture to the contrary, the Tender Agent shall pay the Tender Price with respect to an Undelivered Bond only upon actual receipt of such Bond and such Tender Price shall be equal to the principal amount of such Bond plus accrued interest to the Tender Date. An Undelivered Bond shall not be considered Outstanding pursuant to the Indenture and shall not be secured by the Credit Facility.

Remarketing of Tendered Bonds

Pursuant to the terms of the Indenture and the Remarketing Agreement, and upon receipt of notice from the Tender Agent, specifying the principal amount of Tendered Bonds, as provided in the Indenture, the Remarketing Agent shall exercise its best efforts to sell all of such Tendered Bonds as provided in the Remarketing Agreement; provided, however, that the Remarketing Agent shall not remarket any Bonds at a price below par plus accrued interest thereon; provided further that the Remarketing Agent shall not remarket any Bonds which have been selected for redemption by the Trustee and of which the Remarketing Agent has received notice from the Trustee pursuant to the Indenture unless the Remarketing Agent has given notice of such redemption to the proposed purchaser and such purchaser has acknowledged such redemption.

The Remarketing Agent shall transfer, by electronic transfer of immediately available funds, an amount equal to the proceeds to be derived from such sale of Tendered Bonds to the Tender Agent at or before 9:30 a.m., New York Time, on the Tender Date; provided, however, that in no event shall the Remarketing Agent be obligated to transfer any funds to the Tender Agent in excess of Remarketing Proceeds that the Remarketing Agent has received from purchasers of Tendered Bonds. The Tender Agent shall immediately notify the Trustee in writing of any amount received by the Tender Agent from the Remarketing Agent. The Trustee shall transfer from the Purchase Fund from the proceeds received from the Credit Facility, by electronic transfer of immediately available funds to the Tender Agent at or before 2:00 p.m., New York Time, on the Tender Date, any additional amount needed by the Tender Agent to pay the full Tender Price on the Tender Date.

The Trustee shall, on the Tender Date, remit to the Credit Enhancer the remainder of the funds in the Purchase Fund (other than any funds being held for the benefit of former Owners of Undelivered Bonds) which were not transferred to the Tender Agent on such Tender Date including all investment earnings thereon as soon thereafter as available. The Tender Agent shall, on the Tender Date, remit to the Credit Enhancer the amount (if any) by which the sum of the amounts transferred to the Tender Agent by the Remarketing Agent and the amounts transferred to the Tender Agent by the Trustee exceed the Tender Price of the Tendered Bonds to the extent such funds are owed to the Credit Enhancer; as certified in writing by the Credit Enhancer; provided that, if no funds are owed to the Credit Enhancer, such amount shall be remitted to the Company.

Purchase Fund

The Purchase Fund has not been pledged or assigned under the Indenture and is not subject to the lien created by the Indenture. Upon receipt by the Tender Agent of the proceeds of a remarketing of Tendered Bonds (other than Bonds remarketed to the Company, which will be transferred to the Trustee for deposit in a separate trust account in the Purchase Fund), the Tender Agent shall deposit such funds in a segregated escrow account maintained by the Tender Agent and designated “Undelivered Bond Account” which funds shall not be invested, and the Tender Agent shall not be liable to the Company for any interest thereon, and any moneys shall be held for the benefit of the Bondowners and applied as provided in the Indenture. The Undelivered Bond Account shall constitute an Eligible Account. The Trustee shall deposit moneys received from the Credit Enhancer pursuant to a payment on the Credit Facility in accordance with the Indenture in the Purchase Fund for application to the Tender Price of the Tendered Bonds. Upon receipt by the Trustee of the proceeds of the placement of Pledged Bonds on a Placement Date, the Trustee shall deposit such moneys in the Purchase Fund for payment to the Credit Enhancer to the extent that such Pledged Bonds were purchased from moneys drawn from the Credit Facility and not reimbursed to the Credit Enhancer by the Company and, thereafter, to the Company. Moneys from the remarketing of Tendered Bonds to the Company shall be applied solely to the purchase price of Pledged Bonds. No payment under the Credit Facility shall be applied to the payment of Pledged Bonds. All moneys deposited in the Purchase Fund shall be held in trust by the Trustee for the equal benefit of the owners of the Tendered Bonds.

On any Tender Date or Placement Date, the Trustee shall transfer on the Bond Register ownership of all of the Tendered Bonds to the names of the respective purchasers thereof. From and after such date, the principal of, redemption premium, if any, and interest on such Bonds shall be payable solely to such purchasers, their transferees or the successors thereto, except as provided in the Bond Pledge Agreement with respect to the Pledged Bonds. The Owners of Tendered Bonds immediately prior to a Tender Date with respect to which a Notice of Election to Tender Bonds has been given pursuant to the Indenture or required to be tendered on such date shall be entitled solely to payment of the Tender Price for such Bonds upon delivery thereof to the Tender Agent as provided in the Indenture and shall not be entitled to the payment of any principal, redemption premium, if any, or interest thereon thereafter.

No Remarketing After Certain Defaults

Notwithstanding any provision of the Indenture to the contrary, there shall be no remarketing of Bonds pursuant to the Indenture if there has occurred and is continuing an Event of Default described in the Section herein captioned “THE INDENTURE—Events of Defaults and Remedies.”

Remarketing Agent

The Company, with the prior written consent of the Credit Enhancer, or, if an event of default under the Credit Facility Agreement exists, the Credit Enhancer, shall appoint the Remarketing Agent for the Bonds, subject to the conditions set forth in the Indenture. The Remarketing Agent shall designate to the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it under the Indenture by a written instrument of acceptance or a remarketing agent agreement delivered to the Company and the Credit Enhancer under which the Remarketing Agent will also agree to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Company, the Trustee, the Tender Agent and the Credit Enhancer at all reasonable times. The Company and the Remarketing Agent shall enter into a Remarketing Agreement the terms of which shall be subject to the written approval of the Credit Enhancer.

Any corporation, association or other entity with or into which the Remarketing Agent may be merged or converted or with or into which it may be consolidated, or to which the Remarketing Agent may sell or transfer its assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Remarketing Agent and shall be vested with all the powers, rights, obligations and duties under the Indenture as was its predecessor, without the execution or filing of any instrument or any further act on the part of the predecessor or successor Remarketing Agent, the Trustee or the Company.

The Remarketing Agent shall be a member of the National Association of Securities Dealers, Inc. or a national banking association, shall meet such capitalization or credit requirements as are acceptable to the Rating Agency (if the Bonds are then rated) and the Credit Enhancer and shall be authorized by law to perform all the duties imposed upon it by the Indenture. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Indenture by giving at least 30 days' written notice to the Company, the Tender Agent, the Trustee and the Credit Enhancer. The Remarketing Agent may be removed at any time, without cause, upon at least 30 days' written notice to the Remarketing Agent, at the direction of the Credit Enhancer or the Company by an instrument signed by the Authorized Company Representative, with the written consent of the Credit Enhancer, or at the direction of the Credit Enhancer if an event of default under the Credit Facility Agreement exists, filed with the Trustee, the Credit Enhancer, the Tender Agent, the Company and the Remarketing Agent.

If the Remarketing Agent resigns or is removed, the Remarketing Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity to its successor. If the Company fails to appoint a replacement Remarketing Agent under the Indenture, the Credit Enhancer may do so. Notwithstanding the foregoing, no resignation or removal of the Remarketing Agent shall be effective until a replacement Remarketing Agent has been appointed and accepted in writing the obligations of the Remarketing Agent under the Indenture.

BOOK-ENTRY ONLY SYSTEM

General. The Bonds are available in book-entry only form. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Ownership interests in the Bonds will be available to purchasers only through a book-entry system (the "Book-Entry System") maintained by The Depository Trust Company "DTC", New York, New York.

The following information concerning DTC and DTC's book-entry system has been obtained from DTC. The Company take no responsibility as to the accuracy or completeness thereof and neither the Indirect Participants nor the Beneficial Owners should rely on the following information with respect to such matters, but should instead confirm the same with DTC or the Direct Participants, as the case may be. There can be no assurance that DTC will abide by its procedures or that such procedures will not be changed from time to time.

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for the Bonds and will be deposited with DTC.

DTC and its Participants. DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within

the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

Purchases of Ownership Interests. Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Bonds is discontinued.

Transfers. To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Notices. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices will be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Voting. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Company as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of Principal, Redemption Price and Interest. Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Company or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Company, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

Discontinuation of Book-Entry System. DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Company or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered. The Company may decide to discontinue use of the system of book-entry transfer through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

The Company may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed, registered in the name of DTC's partnership nominee, Cede & Co. (or such other name as may be requested by an authorized representative of DTC), and delivered to DTC (or a successor securities depository), to be held by it as securities depository for Direct Participants. If, however, the system of book-entry-only transfers has been discontinued and a Direct Participant has elected to withdraw its Bonds from DTC (or such successor securities depository), Bond certificates may be delivered to Beneficial Owners in the manner described in the Indenture.

SECURITY FOR THE BONDS

General

The obligation of the Company to make the payments required under the Bonds shall be absolute and unconditional. The Company will pay without abatement, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Company may have or assert against

the Trustee or any Bondowner. Notwithstanding anything contained in the Indenture to the contrary, the obligation of the Company under the Bonds shall be an unsecured, limited recourse obligation of the Company, payable solely from revenues generated by the operation of the Project.

The principal security for payment of the Bonds is the Credit Facility delivered in connection with the issuance of the Bonds. See "THE CREDIT FACILITY."

In addition, the Bonds will be secured by the Company's pledge and assignment under the Indenture of the Credit Facility and all moneys and securities from time to time held by the Trustee under the terms of the Indenture (excluding amounts held in the Purchase Fund (defined below)), and any and all other property (real, personal or mixed) of every kind and nature from time to time, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the Company, or by anyone in its behalf or with its written consent, to the Trustee. The Trustee is authorized under the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture. See "THE INDENTURE." It is not expected that any other property of the Company will be pledged, assigned or transferred as additional security for the Bonds.

PURCHASERS OF BONDS SHOULD NOT EXPECT THE COMPANY'S PAYMENTS ON THE BONDS TO CONSTITUTE SIGNIFICANT SECURITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. THE BONDS ARE NOT SECURED BY THE PROJECT. However, because a default under the Credit Facility Agreement may result in the acceleration or mandatory purchase of the Bonds, information with respect to such documents, the Company and the Project is contained in this Official Statement in order to provide for an assessment of the risk of a default under such documents.

Alternate Credit Facility

The Company may, subject to any applicable provisions of the Credit Facility Agreement, arrange for the substitution of an Alternate Credit Facility for the existing Credit Facility, and the Trustee will accept any Alternate Credit Facility, subject to the provisions described below. The Alternate Credit Facility Date must be a Rate Adjustment Date.

Each Alternate Credit Facility shall be an irrevocable direct-pay letter of credit, bank bond purchase agreement, bond insurance policy, revolving credit agreement, surety bond or other agreement or instrument issued and delivered in substitution for an existing Credit Facility, under which any person or entity (other than the Company) undertakes to make or provide funds to make payments of the principal of, premium, if any, and interest on the Bonds, as and when due, and payments of the purchase price of Bonds that have been tendered for purchase and for which Remarketing Proceeds have not been received.

Each Alternate Credit Facility delivered to the Trustee must be effective as of the Alternate Credit Facility Date (which must be on or prior to the Termination Date of the then existing Credit Facility), and must expire no earlier than one year from the Alternate Credit Facility Date.

Each Alternate Credit Facility shall be reasonably satisfactory in form and substance to the Trustee, and shall be in a stated amount at least equal to the sum of (1) the aggregate principal amount of the Bonds (other than Company Bonds) at the time Outstanding, plus (2) required coverage for interest consisting of (A) 45 days plus the number of days for the reinstatement of the interest component of the Credit Facility (calculated at the Maximum Rate on the basis of a year of 365 or 366 days) if the Bonds

are in a Weekly Mode or Monthly Mode, or (B) 195 days plus the number of days for the reinstatement of the interest component of the Credit Facility (calculated at the highest rate the Bonds may bear during the remaining term of the current Credit Facility on the basis of a year of 360 days and twelve 30-day months) if the Bonds are in any other Interest Mode, or as otherwise approved by the Rating Agency by the issuance or confirmation of the Rating Agency's rating on the Bonds.

The Company shall give written notice to the Trustee, the Tender Agent, the Remarketing Agent, the Rating Agency and the Credit Enhancer not more than 60 nor less than 35 calendar days prior to the Alternate Credit Facility Date stating its election to provide an Alternate Credit Facility on or before the expiration of the Credit Facility then in effect. Upon receipt of this notice, the Trustee will promptly mail a notice of the anticipated delivery of the Alternate Credit Facility by first-class mail to the Remarketing Agent and each affected Owner. The Company shall submit a draft of the Alternate Credit Facility and the related Credit Facility Agreement and appropriate information concerning the issuer of the Alternate Credit Facility to the Rating Agency.

The Company shall cause to be delivered to the Trustee not less than 30 days prior to the expiration or termination date of an existing Credit Facility a binding commitment by the Credit Enhancer that will issue the Alternate Credit Facility.

Upon the exercise of such option by the Company, the Trustee shall send to the Bondowners a notice in substantially the form of attached to the Indenture not later than 20 calendar days prior to the proposed Alternate Credit Facility Date. This notice may establish conditions to the occurrence of the Alternate Credit Facility Date as requested by the Company with the prior written consent of the Remarketing Agent, including that the original Alternate Credit Facility is delivered on the proposed Alternate Credit Facility Date.

On or prior to any Alternate Credit Facility Date, the Company shall furnish to the Trustee:

- (1) the original Alternate Credit Facility;
- (2) an Opinion of Counsel from counsel to the Credit Enhancer issuing the Alternate Credit Facility to the effect that the Alternate Credit Facility is a valid and binding obligation of such Credit Enhancer, enforceable in accordance with its terms, subject to customary exceptions relating to bankruptcy and insolvency;
- (3) an Opinion of Counsel, which shall also be addressed to the Company and the Trustee, stating that the delivery of the Alternate Credit Facility to the Trustee is authorized under the Indenture and complies with its terms;
- (4) written evidence from the Rating Agency as to the rating on the Bonds to be in effect on the Bonds as of the Alternate Credit Facility Date;
- (5) a certificate from the Authorized Company Representative and a written acknowledgment by the Authorized Credit Enhancer Representative of the Existing Credit Facility stating that all amounts owing to the Credit Enhancer under the Credit Documents have been paid and that there are no Pledged Bonds outstanding;
- (6) a revised draw procedures exhibit to the Indenture; and

(7) an Opinion of Counsel acceptable to the Trustee and the Credit Enhancer issuing the Alternate Credit Facility to the effect that (A) the exemption of the Bonds (or any securities evidenced thereby) from the registration requirements of the Securities Act of 1933, as amended, shall not be impaired by the delivery of the Alternate Credit Facility, or (B) the applicable registration or qualification requirements of the Securities Act of 1933 shall have been satisfied.

The Bonds are subject to mandatory tender for purchase on the Alternate Credit Facility Date. See “TENDER AND PURCHASE OF BONDS—Mandatory Tender for Purchase—On Alternate Credit Facility Date.”

Enforceability

The remedies available upon an Event of Default under the Indenture or if the Credit Enhancer should fail to honor a drawing under a Credit Facility will, in many respects, be dependent upon judicial decisions which are subject to discretion and delay. Upon the occurrence of an event of bankruptcy with respect to the Company or the Credit Enhancer, under existing constitutional and statutory law and judicial decisions, including specifically, Title 11 of the United States Code (the Federal Bankruptcy Code), the remedies specified by the Federal Bankruptcy Code or in the Indenture may not be readily available or may be limited against either the Company, the Credit Enhancer or both. The various legal opinions to be delivered with the Bonds will be qualified as to the enforceability of the various legal instruments by reference to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

THE CREDIT FACILITY

General

As used in this Official Statement, the term “Credit Facility” means initially the Credit Facility, and thereafter any Alternate Credit Facility issued in replacement of the Credit Facility. As used herein, the term “Credit Enhancer” means initially the Credit Enhancer.

Prior to its expiration, the Credit Facility may be replaced with an Alternate Credit Facility in accordance with the provisions of the Indenture. See “SECURITY FOR THE BONDS – Alternate Credit Facility.”

Credit Facility

The Credit Facility, the form of which is attached as Appendix C, will be an irrevocable, direct pay letter of credit (issued by the Credit Enhancer to pay, in immediately available funds, within a specified period of time after timely presentation by the Trustee of specified certificates, an amount equal to \$[5,038,455.00], consisting of (i) the principal amount of the Bonds at stated maturity or upon earlier redemption, plus (ii) 45 days’ interest computed at the rate of 12% per annum based on a 365-day or 366-day year, as the case may be. The Trustee will draw moneys under the Credit Facility to the extent necessary to make payments of such amounts on the Bonds, including the purchase price of Bonds tendered for purchase. Drawings by the Trustee under the Credit Facility will reduce the amounts available for subsequent drawings, subject to reinstatement as provided in the Credit Facility.

The Credit Facility shall expire at 4:00 p.m., Milwaukee, Wisconsin time, on December 15, 2013 (the “Stated Expiration Date”). Notwithstanding the foregoing, the Credit Facility shall expire earlier than such date upon the first to occur of:

(a) the date of receipt by the Credit Enhancer of notice from the Trustee that an Alternate Credit Facility has been issued in substitution for the Credit Facility and such Alternate Credit Facility is then effective;

(b) the date on which the Credit Enhancer honors a final drawing or drawings available to be made under the Credit Facility, in which event the Credit Facility shall expire immediately after the Credit Enhancers honors such drawing or drawings;

(c) the date of receipt by the Credit Enhancer of notice from the Trustee of a certificate stating that no Bonds remain outstanding under the Indenture and the Indenture, insofar as the Bonds are concerned, has been discharged;

(d) fifteen calendar days after the earlier of

(i) the date of the acceleration of the Bonds under the Indenture because of the occurrence of an Event of Default under the Indenture, or

(ii) the date the Trustee has received written notice from the Credit Enhancer to accelerate the Bonds because of the occurrence of an “event of default” under the Credit Facility Agreement, as the case may be; or

(e) the date of receipt from the Trustee of notice stating that the interest rate for the Bonds is no longer in the Weekly Mode.

THE CREDIT FACILITY AGREEMENT

General

The following summarizes certain provisions of the Credit Facility Agreement. Reference is made to the Credit Facility Agreement for the detailed provisions thereof. The Credit Facility is being issued pursuant to the Credit Facility Agreement, under which the Company will be obligated, among other things, to reimburse the Credit Enhancer for the full amount of any drawing to be made under the Credit Facility. To the extent that any of the Company’s reimbursement obligation is not paid, such reimbursement obligation shall bear interest at the rate set forth in the Credit Facility Agreement. The Company is also obligated to pay periodically certain amounts to the Credit Enhancer as fees for the issuance and maintenance of the Credit Facility.

The Company has made certain affirmative representations, warranties and covenants and certain negative covenants to the Credit Enhancer to induce the Credit Enhancer to issue the Credit Facility to the Trustee. These covenants are exclusively for the benefit of the Credit Enhancer and may be waived, modified or enforced as the Credit Enhancer may determine.

Events of Default

Under the Credit Facility Agreement, an Event of Default (as defined in the Credit Facility Agreement) shall exist if any of the following occurs and is continuing and is not waived in writing by the Credit Enhancer pursuant to the Credit Facility Agreement:

(a) the Company fails to pay the Credit Enhancer, (i) any principal or interest on any Advance (as defined in the Credit Facility Agreement) or any portion thereof, when due, or (ii) any other amount required to be paid by the Company thereunder or under any other Loan Document (as defined in the Credit Facility Agreement) within five Business Days of demand therefor; or

(b) the Company fails to comply with any of its covenants contained in the Credit Facility Agreement; or

(c) the Company fails to perform, observe or comply with any other of the terms, covenants, conditions, or provisions contained in the Credit Facility Agreement within thirty days after the Company receives written notice from the Credit Enhancer of such failure to perform, observe or comply, or any other covenant or agreement (not specified above) contained in any other Loan Document on its part to be performed or observed and such failure continues after the applicable grace or notice period, if any, specified in the relevant document; or

(d) any representation or warranty made by the Company in connection with the Loan Documents is found to have been materially or knowingly false when made; or

(e) the Company (i) fails to make any payment in respect of any Indebtedness (as defined in the Credit Facility Agreement) when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure, and such failure would have a Material Adverse Effect; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure, if the effect of such failure, event or condition is to cause or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to declare such Indebtedness to be due and payable prior to its stated maturity and such declaration would have a Material Adverse Effect; or

(f) any payment or other material provision of the Credit Facility Agreement or any of the other Loan Documents applicable to the Company ceases to be valid and binding on the Company, or the Company denies that it has any or further liability or obligation under the Credit Facility Agreement, or a proceeding is commenced by any Governmental Authority seeking to establish the invalidity or unenforceability thereof; or

(g) one or more judgments, decrees or order for the payment of money, which is not subject to insurance (or for which the carrier has denied or disputed coverage), in excess of the Threshold Amount (as defined in the Credit Facility Agreement) in the aggregate shall be

rendered against the Company and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, decree or order, or (ii) there shall be a period of 20 consecutive calendar days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) if the Company shall become or be the subject of any insolvency proceeding or shall file a petition or other pleading seeking an “order for relief” within the meaning of the United States Bankruptcy Code (or a similar remedy) or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company of substantially all of its assets, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or if a petition or other pleading shall be filed against the Company seeking an “order for relief” within the meaning of the United States Bankruptcy Code (or a similar remedy) or any reorganization, composition, readjustment, liquidation or similar relief under any present or future law or regulation and shall remain undismissed or unstayed for an aggregate period of 60 days (whether or not consecutive), or if, by an order or decree of a court of competent jurisdiction, the Company shall become the subject of an “order for relief” within the meaning of the United States Bankruptcy Code (or a similar remedy) or relief shall be granted under or pursuant to any such petition or other pleading, and such order or decree continues unvacated or unstayed, on appeal or otherwise, and in effect for a period of 60 days; or if, by order or decree of such court, there shall be appointed, without the consent or acquiescence of the Company, a trustee in bankruptcy or reorganization or a receiver or liquidator of the Company or of all or any substantial part of the property of the Company and such order or decree continues unvacated or unstayed, on appeal or otherwise, and in effect for a period of 60 days; or

(i) the lien of the Security Documents (as defined in the Credit Facility Agreement) shall for any reason cease to create a lien on the collateral described therein with the priority (subject to Permitted Liens) purported to be created thereby securing the Obligations to the Credit Enhancer; or

(j) the occurrence of an “event of default,” however defined, under any other Loan Documents.

Remedies

Without limiting any other rights or remedies of the Credit Enhancer provided for elsewhere in the Credit Facility Agreement, or in any other Loan Documents, or by applicable Laws, or in equity, or otherwise:

Upon the occurrence, and during the continuance, of any Event of Default:

(a) the obligations of the Credit Enhancer and all rights of the Company under the Loan Documents shall be suspended without notice to or demand upon the Company, which are expressly waived by the Company, except that the Credit Enhancer may waive an Event of Default or, without waiving, determine, upon terms and conditions satisfactory to itself to make further Advances;

(b) the Credit Enhancer may declare all or any part of the unpaid principal of all Advances, all interest accrued and unpaid thereon and all other amounts payable by the Company under the Loan Documents to be immediately due and payable, whereupon the same shall become and be forthwith due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by the Company;

(c) the Credit Enhancer may, pursuant to the Credit Facility, notify the Trustee that the Credit Facility will terminate thirty (30) days following delivery of such notice; and

(d) the Credit Enhancer may exercise any and all rights and remedies provided herein, under the other Loan Documents, and/or at law and/or in equity.

Upon the occurrence and during the continuance of any Event of Default, the Credit Enhancer, without notice to (except as expressly provided for in any Loan Document) or demand upon the Company, which are expressly waived by the Company (except as to notices expressly provided for in any Loan Document), may proceed to protect, exercise and enforce its rights and remedies under the Loan Documents against the Company and such other rights and remedies as are provided by Laws or equity.

The order and manner in which the Credit Enhancer's rights and remedies are to be exercised shall be determined by the Credit Enhancer in its sole discretion. Regardless of how the Credit Enhancer may treat payments for the purpose of its own accounting, for the purpose of computing Company's Obligations under the Credit Facility Agreement, payments shall be applied first, to the reasonable costs and expenses of the Credit Enhancer, as set forth above, second, to the payment of accrued and unpaid interest due to the Credit Enhancer under any Loan Documents to and including the date of such application (ratably, and without duplication, according to the accrued and unpaid interest due under each of the Loan Documents), and third, to the payment of all other amounts (including principal and fees) then owing to the Credit Enhancer under the Loan Documents. No application of payments will cure any Event of Default, or prevent acceleration, or continued acceleration, of amounts payable by the Company under the Loan Documents or prevent the exercise, or continued exercise, of rights or remedies of the Credit Enhancer under the Credit Facility Agreement, the Loan Documents or at Laws or in equity.

Notwithstanding any provision of the Credit Facility Agreement to the contrary, the Credit Enhancer shall continue to honor draws submitted on the Credit Facility following an Event of Default until such time as the Credit Facility terminates.

Upon an Event of Default by the Company under the Credit Facility Agreement, the Credit Enhancer may direct the Trustee to accelerate the Bonds or conduct a mandatory purchase of the Bonds pursuant to the Indenture. See "THE INDENTURE—Acceleration" and "—Mandatory Purchase."

Security for the Credit Enhancer

The obligations of the Company to the Credit Enhancer are secured by the Credit Documents. Pursuant to the Bond Pledge Agreement, the Company pledges to the Credit Enhancer, as additional collateral, any Bonds purchased with the proceeds of a draw upon the Credit Facility. See "TENDER AND PURCHASE OF BONDS—Purchase of Tendered Bonds."

As additional collateral, the Company has delivered the Mortgage and, together with the Guarantors, the Environmental Indemnity Agreement. Pursuant to the Guaranty Agreement, the Guarantors guarantee to the Credit Enhancer the prompt and complete payment of the Company's

reimbursement obligations and payment and performance of all other obligations under the Credit Facility Agreement, to the extent provided in the Guaranty Agreement.

The provisions of the Bond Pledge Agreement, the Mortgage, the Environmental Indemnity Agreement and the Guaranty Agreement are exclusively for the benefit of the Credit Enhancer and may be applied, waived, modified or enforced as the Credit Enhancer may determine.

THE INDENTURE

The following, in addition to the information provided under “THE BONDS,” summarizes certain provisions of the Indenture between the Company and the Trustee. Reference is made to the Indenture for the detailed provisions thereof.

Assignment and Pledge

Pursuant to the Indenture, as security for the Bonds, the Company assigns and pledges, without recourse, to the Trustee the Credit Facility and all moneys and securities from time to time held by the Trustee under the terms of the Indenture (excluding amounts held in the Purchase Fund), and any and all other property (real, personal or mixed) of every kind and nature from time to time, by delivery or by writing of any kind, pledged, assigned or transferred to the Trustee, as and for additional security under the Indenture by the Company, or by anyone in its behalf or with its written consent.

It is not expected that any other property of the Company will be pledged, assigned or transferred to the Trustee as additional security for the Bonds.

Provisions for the Bonds

The Indenture makes provision for the issuance of the Bonds, their redemption and all other terms pertaining to the Bonds, as described in the section herein “THE BONDS.”

Bond Payments by the Company

Except as reduced as described below, the Company will make Bond Payments to the Trustee at its Administrative Office for deposit in the Unavailable Moneys Account of the Revenue Fund, in federal or other immediately available funds, during normal business hours on or before 2:00 p.m., New York Time, on each Interest Payment Date or Tender Date, as applicable, as follows:

- (i) the amount of the principal, if any, of the Bonds due and payable on the Interest Payment Date or Tender Date, as applicable, whether at stated maturity, by redemption or acceleration or otherwise;
- (ii) the amount of interest on the Bonds due and payable on the Interest Payment Date or Tender Date, as applicable, including the amount, if any, for which the Company receives notice from the Trustee in accordance with the Indenture; and
- (iii) the Tender Price of any Bonds required to be purchased in the amount demanded by the Trustee in accordance with the Indenture.

Payment of the amount of redemption premium, if any, on the Bonds due and payable on a Bond Payment Date must be made to the Trustee by the Company the requisite number of days prior to the Bond Payment Date in order for such moneys to constitute Available Moneys on such Bond Payment Date.

A Bond Payment due from the Company under the Indenture will be reduced by the amount received by the Trustee and deposited in the Credit Facility Account by the applicable Bond Payment Date or Tender Date.

Except for such interest of the Company as may arise pursuant to the Indenture, the Company acknowledges that the Company has no interest in the Revenue Fund, the Debt Service Fund or the Purchase Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Bondowners or otherwise as provided in the Indenture.

Additional Payments

The Company shall pay the following amounts to the following persons, all as “Additional Payments” under the Indenture:

- (i) to the Trustee, when due, all reasonable fees and charges for its services rendered under the Indenture, and all reasonable expenses (including without limitation reasonable fees and charges of any paying agent, bond registrar, counsel, accountant, engineer or other person) incurred in the performance of the duties of the Trustee under the Indenture for which the Trustee and other persons are entitled to repayment or reimbursement;
- (ii) to the Rating Agency, upon demand, the annual rating surveillance fee, if any;
- (iii) to the appropriate person, such payments as are required (i) as payment for or reimbursement of any and all reasonable costs, expenses and liabilities incurred by the Credit Enhancer or the Trustee or any of them in satisfaction of any obligations of the Company hereunder that the Company does not perform, or incurred in the defense of any action or proceeding with respect to the Indenture or the other Bond Documents, or (ii) as reimbursement for reasonable expenses paid, or as prepayment of reasonable expenses to be paid, by the Trustee and that are incurred as a result of a request by the Company or a requirement of the Indenture or any other Bond Document and that the Company is not otherwise required to pay under the Indenture or any other Bond Document;
- (iv) to the Tender Agent, when due, all reasonable fees and charges for its services rendered under the Indenture, and all reasonable expenses (including without limitation reasonable fees and charges of any paying agent, bond registrar, counsel, accountant, engineer or other person) incurred in the performance of the duties of the Tender Agent under the Indenture for which the Tender Agent and other persons are entitled to repayment or reimbursement; and
- (v) to the appropriate person, any other amounts reasonably required to be paid by the Company under the Indenture or any other Bond Document.

Any past due Additional Payments shall continue as an obligation of the Company until they are paid and shall bear interest (except as may be otherwise provided in the Credit Documents with respect to obligations owed to the Credit Enhancer) at the Default Rate during the period such Additional Payments remain unpaid.

Funds and Accounts

Establishment of Funds and Accounts. The following Funds and Accounts of the Company to be held by the Trustee are created and established under the Indenture: (a) the Proceeds Fund, (b) the Revenue Fund, consisting of the Unavailable Moneys Account, the Available Moneys Account and the Credit Facility Account; (c) the Debt Service Fund, consisting of the Interest Account, the Principal Account and the Redemption Account; and (d) the Purchase Fund.

Each Fund and Account shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in the Indenture. All moneys deposited in the Funds and Accounts shall be used solely for the purposes set forth in the Indenture. The Trustee shall keep and maintain adequate records pertaining to each Fund and Account and all disbursements therefrom.

The Available Moneys Account, Credit Facility Account, the Debt Service Fund and the Purchase Fund shall each constitute an Eligible Account.

Proceeds Fund. On the Bond Issuance Date, the Trustee will deposit into the Proceeds Fund the proceeds received from the sale of the Bonds. The Trustee will disburse moneys from the Proceeds Fund upon receipt of a written disbursement request signed by the Authorized Company Representative and the Authorized Credit Enhancer Representative. The Trustee is entitled to conclusively rely upon the written request.

Revenue Fund. The Trustee will deposit into the Revenue Fund all amounts received by the Trustee that are subject to the lien and pledge of the Indenture, to the extent not required to be deposited in other Funds and Accounts in accordance with the terms of the Indenture. The Trustee shall apply moneys from the Revenue Fund, first from moneys on deposit in the Credit Facility Account which represent payments received with respect to the Credit Facility, second, from moneys in the Available Moneys Account, and third, from investment earnings on Funds and Accounts (to the extent such moneys constitute Available Moneys), on each Interest Payment Date and Principal Payment Date on the Bonds, for application in the order of priority and for the purposes as follows:

- (a) First, to the Interest Account of the Debt Service Fund, an amount sufficient to pay the interest becoming due and payable on the Bonds on such date,
- (b) Second, to the Principal Account of the Debt Service Fund, an amount sufficient to pay the principal of the Bonds maturing on such date, if any; and
- (c) Third, to the Redemption Account of the Debt Service Fund, an amount sufficient to pay the principal of and redemption premium, if any, on the Bonds subject to redemption on such date, if any.

Moneys in the Credit Facility Account remaining after the transfers made pursuant to the paragraph above shall be returned to the Credit Enhancer as a reimbursement to the Company's account on the amounts paid under the Credit Facility.

The Trustee will deposit into the Unavailable Moneys Account other amounts received from the Company pursuant to the Credit Facility Agreement, principal, interest and premium payments made by

the Company. Upon the Credit Enhancer's payment to the Trustee under the Credit Facility pursuant to a request under the Indenture, the Trustee shall transfer from the Unavailable Moneys Account to the Credit Enhancer interest on the Bonds paid under the Credit Facility plus any additional amount as the Trustee is directed in writing by the Credit Enhancer, up to the amount of the payment made under the Credit Facility as a reimbursement to the Credit Enhancer of the payment made under the Credit Facility. In the event of an Event of Default described in the Section herein captioned "THE INDENTURE—Events of Defaults," any moneys on deposit in the Unavailable Moneys Account that become Available Moneys shall be transferred to the Available Moneys Account and applied in accordance with the Indenture.

The Trustee will also deposit into the Unavailable Moneys Account moneys received from the Company to be applied to the purchase of Bonds pursuant to the Indenture or the redemption of Bonds pursuant to the Indenture. When moneys deposited pursuant to the preceding sentence become Available Moneys, such Available Moneys shall be transferred to the Available Moneys Account. Any moneys remaining in the Unavailable Moneys Account following the redemption or purchase of Bonds with respect to which such deposit was made shall be applied first to pay the Credit Enhancer any amounts due and payable under the Credit Facility Agreement as certified in writing by the Credit Enhancer, second to pay the accrued and unpaid fees and expenses of the Trustee and the Tender Agent and third to the Company.

Available Moneys on deposit in the Available Moneys Account to be applied to the payment of the Bonds at maturity shall be transferred as described in the first paragraph of this section. Available Moneys on deposit in the Available Moneys Account, to be applied to the purchase of Bonds pursuant to the Indenture, shall be transferred to the Purchase Fund on the Tender Date to the extent necessary to pay the Tender Price of the Bonds as the same shall become due and payable on such Tender Date. Any moneys remaining in the Available Moneys Account following the redemption or purchase of Bonds with respect to which such deposit was made shall be applied first to pay the Credit Enhancer any amounts due and payable under the Credit Facility Agreement as certified in writing by the Credit Enhancer, second to pay the accrued and unpaid fees and expenses of the Trustee and the Tender Agent, and third to the Company.

Debt Service Fund. The Trustee shall deposit into the Interest Account the amounts required by the Indenture. Moneys on deposit in the Interest Account shall be applied solely to pay the interest on the Bonds as the same becomes due and payable. On each date fixed for redemption of the Bonds and on each scheduled Interest Payment Date on the Bonds, the Trustee shall remit to the respective Bondowners of such Bonds an amount from the Interest Account sufficient to pay the interest on the Bonds becoming due and payable on such date.

The Trustee shall deposit into the Principal Account the amounts required by the Indenture. Moneys on deposit in the Principal Account shall be applied solely to pay the principal of the Bonds as the same becomes due and payable at maturity. On each Principal Payment Date of the Bonds, the Trustee shall set aside and hold in trust an amount from the Principal Account sufficient to pay the principal of the Bonds becoming due and payable on such date.

The Trustee shall deposit into the Redemption Account the amounts required by the Indenture. Moneys on deposit in the Redemption Account shall be applied solely to pay the principal and premium, if any, on the Bonds as the same become due and payable by redemption. On each date fixed for such redemption, the Trustee shall set aside and hold in trust an amount from the Redemption Account sufficient to pay the principal of and premium, if any, on the Bonds becoming due and payable on such date.

The principal of and premium, if any, and interest on the Bonds shall be paid solely from the following sources in the order of priority listed:

- (1) proceeds of a payment under the Credit Facility (except for premium, if any);
- (2) Available Moneys from any other source; and
- (3) moneys from any other source.

Funds Held in Trust; Application. All moneys deposited with or paid to the Trustee for the account of any Fund or Account under any provision of the Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of the Indenture shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of the Indenture and, until used or applied as therein provided, shall constitute part of the Trust Estate (except for the Purchase Fund) and be subject to the lien, terms and provisions of the Indenture and shall not be commingled with any other funds of the Company or the Credit Enhancer except for investment purposes as provided below under the caption “–Investment of Moneys.” Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received under the Indenture except for accounting for interest from the Investment Securities.

Draw Procedures with Respect to Credit Facility

The Indenture directs the Trustee to draw moneys under the Credit Facility, in accordance with the terms thereof and as further provided in the draw procedures set forth in an exhibit to the Indenture or any substitute therefor as described in the last paragraph in this section, in the amounts and at such time as may be necessary to make timely payments of the principal of and interest, but not premium, on the Bonds required to be made from the Debt Service Fund. If the amount of interest is not determinable at the time of presentation of a request to the Credit Enhancer, the Trustee is required to calculate such interest at the Maximum Rate. In accordance with the preceding sentences, during the period that the Bonds are secured by the Credit Facility, the Trustee shall request payments under the Credit Facility by presenting a conforming request to the Credit Enhancer prior to the Interest Payment Date, Principal Payment Date or redemption or purchase date referenced in subsections (1), (2), (3) and (6) below, and on or prior to the applicable Tender Date referenced in subsections (4) and (5) below, in order for moneys to be received in the amounts and at the times as follows:

- (1) no later than 12:00 noon, New York Time, on each Interest Payment Date, an amount equal to interest due on the Bonds on such Interest Payment Date;
- (2) no later than 12:00 noon, New York Time, on each Principal Payment Date on which Bonds mature, an amount equal to the full principal amount of the Bonds coming due on such Principal Payment Date;
- (3) no later than 12:00 noon, New York Time, on each Principal Payment Date on which the Bonds are being redeemed pursuant to the provisions of the Indenture, in an amount which will be equal to the full principal amount plus accrued interest on the Bonds to be redeemed (other than the amount owing as a redemption premium, if any);
- (4) no later than 2:00 p.m., New York Time, on the Tender Date for any Bonds in accordance with the optional tender provisions of the Indenture, in an amount which, when added

to Remarketing Proceeds on deposit with the Tender Agent, is equal to the Tender Price of Bonds for which Notices of Election to Tender Bonds have been timely received;

(5) no later than 2:00 p.m., New York Time, on the Tender Date for any Bonds in accordance with the provisions of the Indenture, in an amount which, when added to Remarketing Proceeds on deposit with the Tender Agent, is equal to the Tender Price of all of the Bonds required to be tendered on the Tender Date pursuant to the provisions of the Indenture; and

(6) no later than 2:00 p.m., New York Time, on each date fixed for the purchase of Bonds in lieu of redemption pursuant to the provisions of the Indenture, in an amount which will be equal to the full principal amount plus accrued interest on the Bonds to be purchased in lieu of redemption (other than the amount owing as a redemption premium, if any).

Notwithstanding the above provisions, pursuant to the Indenture, the Trustee shall promptly demand payment under the Credit Facility upon any acceleration of the maturity of the Bonds, or upon any direction by the Credit Enhancer to the Trustee to purchase the Bonds for the Credit Enhancer's own account (as described in the subsection below under the caption "Mandatory Purchase").

The Credit Enhancer's obligation under the Credit Facility will be reduced from time to time if the outstanding principal amount of Bonds is reduced and to the extent of the principal amount of Pledged Bonds which have not been remarketed.

The Company is permitted under the Indenture to deliver an Alternate Credit Facility to replace the outstanding Credit Facility. The Company must also meet certain requirements described herein under the caption "SECURITY FOR THE BONDS—Alternate Credit Facility."

Prior to the delivery of an Alternate Credit Facility, the Trustee shall receive from Counsel a revised exhibit to the Indenture establishing the draw procedures for the Alternate Credit Facility in form reasonably satisfactory to the Trustee and approved in writing by the Credit Enhancer (which is the provider of the Alternate Credit Facility) and the Rating Agency (if the Bonds are to be rated by the Rating Agency on the Alternate Credit Facility Date, which approval may be evidenced by the credit rating with respect to the Bonds as of the Alternate Credit Facility Date). Such revised exhibit shall not constitute an amendment, supplement or modification to the Indenture for the purposes of the provisions of the Indenture applicable to Supplemental Indentures and therefore does not require the approval by the Company or the consent of the Bondowners. Such exhibit shall be binding upon the Trustee and the Credit Enhancer (which is the provider of the Alternate Credit Facility) from and after the Alternate Credit Facility Date.

Demand for payment of the Tender Price of Tendered Bonds on an Alternate Credit Facility Date shall be made on the Credit Facility then in effect, not the Alternate Credit Facility that is to be effective as of the Alternate Credit Facility Date. The Trustee will promptly surrender the Credit Facility being replaced only after receipt of the payment under the Credit Facility on the Alternate Credit Facility Date and the satisfaction of the requirements for the delivery of the Alternate Credit Facility. See "SECURITY FOR THE BONDS—Alternate Credit Facility."

Investment of Moneys

Moneys in all Funds and Accounts (except the Purchase Fund and the Credit Facility Account which will remain uninvested) shall be continuously invested and reinvested by the Trustee at the written direction of the Company, in each case with the written consent of the Credit Enhancer. All moneys

obtained through a payment under the Credit Facility will remain uninvested. Moneys on deposit in all Funds and Accounts may be invested only in Investment Securities; provided that

(1) Available Moneys (other than payments under the Credit Facility) to be applied to the payment of the Bonds at maturity or upon redemption or purchase shall be invested and reinvested by the Trustee, at the Company's Written Request with the written consent of the Credit Enhancer, only in Government Securities maturing on the earlier of 30 days after the date on which such obligations are acquired or such time or times as said money shall be needed for the purposes for which they were deposited; and

(2) except as provided in (1) above, (i) amounts on deposit in the Debt Service Fund shall be invested only in and, (ii) if written investment directions have not been received from the Company, the Trustee is authorized to invest amounts in any other Fund only in Investment Securities as described in subsection (j) of the definition of Investment Securities in the discretion of the Trustee. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees, which fees may be deducted from income earned on investments.

The Trustee must receive written directions of the Borrower to invest pursuant to the Indenture by 12:00 noon, New York Time. All investments shall mature not later, nor, to the extent reasonably practicable subject to the restrictions above, earlier, than the date such moneys or investment proceeds are required for the purposes of the respective Funds and Accounts.

Net investment earnings on each Fund and Account shall be credited to such Fund and Account except as set forth in this subsection.

All investments shall constitute a part of the Fund or Account from which the moneys used to acquire such investments have come. The Trustee shall sell and reduce to cash a sufficient amount of investments in a Fund or Account whenever the cash balance therein is insufficient to pay the amounts required to be paid therefrom. The Trustee may transfer investments from any Fund or Account to any other Fund or Account in lieu of cash when required or permitted by the provisions of the Indenture.

The Trustee may make any investment pursuant to the Indenture through its bond department or short-term investment department or through any affiliate of the Trustee. In making or disposing of any investment permitted under the Indenture, the Trustee is authorized to deal with itself (in its individual capacity) or with one or more of its affiliates, whether it or the affiliate is acting as an agent of the Trustee or for any third person or dealing as principal for its own account. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees, which may be deducted from income earned on investments.

The Company acknowledges that regulations of the Comptroller of the Currency grant the Company the right to receive brokerage confirmations of the security transactions as they occur. The Company specifically waives such notification to the extent permitted by law and will receive cash transaction statements pursuant to the Indenture that will detail all investment transactions.

Events of Default

Each of the following constitutes an Event of Default under the Indenture:

- (a) default in the due and punctual payment of any interest on any Bond;

- (b) default in the due and punctual payment of the principal of or redemption premium, if any, on any Bond, whether at the stated maturity or accelerated maturity thereof, or upon proceedings for redemption thereof or otherwise;
- (c) default in the payment of the Tender Price of any Tendered Bond;
- (d) the occurrence of either or both of the following:
 - (i) if the interest component of the Credit Facility is not subject to automatic reinstatement, the Trustee has received written notice from the Credit Enhancer, within the period provided for in the Credit Facility, that the Credit Enhancer will not reinstate the interest portion of the Credit Facility; or
 - (ii) the Trustee's receipt of written notice from the Credit Enhancer that an "Event of Default" has occurred under the Credit Facility Agreement together with a direction from the Credit Enhancer to the Trustee requiring either (A) the acceleration of the Bonds pursuant to the provisions of the Indenture or (B) the mandatory purchase of the Bonds pursuant to the Indenture; or
- (e) the occurrence of an Act of Bankruptcy with respect to the Company.

The Trustee shall give Immediate Notice of any Event of Default to the Company and the Credit Enhancer as promptly as practicable after the occurrence of an Event of Default of which the Trustee has knowledge or is deemed to have knowledge as provided in the Indenture.

Acceleration

If an Event of Default described in paragraphs (a), (b), (c) or (d)(i) of the subsection herein captioned "–Events of Default" has occurred and is continuing, the Trustee shall, by notice in writing delivered to the Company and the Credit Enhancer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable. **The Bonds shall cease to bear interest immediately upon the Trustee's declaration.** The principal and interest shall thereupon become due and payable on a date established by the Trustee, which date shall be a Business Day that is not more than ten (10) calendar days after such acceleration.

If an Event of Default described in subparagraph (d)(ii) or (e) of the subsection herein captioned "–Events of Default" has occurred and is continuing, the Trustee shall immediately, by notice in writing delivered to the Company and the Credit Enhancer, declare the principal of all of the Bonds then Outstanding and the interest accrued thereon due and payable on the date established by the Trustee, which date shall be a Business Day that is at least three and no more than ten calendar days after receipt by the Trustee of notice of an Event of Default described in subparagraphs (d)(ii) and (e) of the subsection above captioned "–Events of Default." **The Bonds shall cease to bear interest immediately upon the Trustee's declaration;** subject, however, to the provisions regarding rescission of the declaration of acceleration and mandatory purchase described below.

Upon any acceleration of the maturity of the Bonds under the Indenture, the Trustee shall promptly demand payment under the Credit Facility in accordance with the Indenture to the extent permitted by the terms thereof and pursue the remedies of the Trustee thereunder.

If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal of and interest on the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the Company under the Indenture shall either be paid or provision reasonably satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee shall, but only with the approval of the Credit Enhancer and the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding, and upon the written reinstatement of the Credit Facility and written rescission of the notice from the Credit Enhancer under the Indenture, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of the Bonds.

Notwithstanding the foregoing, if the Credit Facility is in effect, no declaration of acceleration under this Section shall be annulled and rescinded without (a) receipt by the Trustee of the prior written consent to such action by the Credit Enhancer, provided that the Credit Enhancer is not then in default of its payment obligations under the Credit Facility, and (b) receipt by the Trustee of written evidence from the Credit Enhancer that the Credit Facility has been reinstated in full and that the Credit Enhancer has rescinded any declaration of default under the Reimbursement Agreement.

In case of any rescission, then and in every such case the Company, the Trustee and the Bondowners shall be restored to their former position and rights under the Indenture respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Mandatory Purchase

Upon the occurrence of an Event of Default under subparagraph (d)(ii) or (e) of the subsection above captioned “–Events of Default” and if an Event of Default under subparagraph (d)(i) of the subsection above captioned “–Events of Default” has not occurred, the Credit Enhancer by written notice to the Trustee as provided in the Indenture may direct the Trustee to purchase the Bonds for the Credit Enhancer’s own account, rather than to accelerate the Bonds as provided in the Indenture. In such case, the Trustee shall draw upon the Credit Facility in accordance with the provisions of the Indenture to pay the purchase price for the Bonds, which shall be an amount equal to the principal of all Outstanding Bonds and accrued interest thereon to the Mandatory Purchase Date, and upon receipt of the proceeds of such draw, shall immediately purchase the Bonds in accordance with the provisions of the Indenture. The Bonds so purchased by the Credit Enhancer shall remain Outstanding under the Indenture.

Exercise of Remedies by the Trustee

If an Event of Default has occurred and is continuing, the Trustee may, with the approval of the Credit Enhancer if the Credit Enhancer has not failed to honor a proper draw under the Credit Facility, pursue any available remedy at law or equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and redemption premium, if any, and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Company as set forth in the Indenture.

If an Event of Default has occurred and is continuing, and if requested so to do by the Credit Enhancer or by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding and indemnified as provided in the Indenture, with the approval of the Credit Enhancer if the Credit Enhancer has not failed to honor a proper draw under the Credit Facility, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondowners.

All rights of action under the Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Bondowner, and any recovery or judgment shall, subject to the provisions of the Indenture, be for the equal benefit of all the Owners of the Outstanding Bonds.

Limitation on Exercise of Remedies by Bondowners

No Bondowner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for the appointment of a receiver or any other remedy under the Indenture, unless:

- (i) a default has occurred of which the Trustee has notice or is deemed to have notice as provided in the Indenture, and
- (ii) such default shall have become an Event of Default, and
- (iii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name, and shall have provided to the Trustee indemnity as provided in the Indenture, and
- (iv) the Trustee shall thereafter fail or refuse to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name, and
- (v) the Credit Enhancer shall have consented thereto if the Credit Enhancer has not failed to honor a proper draw under the Credit Facility;

and such notification, request and indemnity are declared in every case, at the option of the Trustee (with the exception of any duty to make demand on, and proceed under, the Credit Facility, cause an acceleration of the Bonds or make payments when due), to be conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture, or for the appointment of a receiver or for any other remedy under the Indenture, it being understood and intended that no one or more Bondowners shall have any right in any manner whatsoever to affect, disturb or prejudice the Indenture by such Bondowners' action or to enforce any right thereunder except in the manner provided in the Indenture, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in the Indenture, however, shall affect or impair the right of any Bondowner to payment of the principal of, redemption premium, if any, and interest on any Bond at and after its maturity or the obligation of the Company to pay the principal of, redemption premium, if any, and interest on the Bonds to the respective Owners thereof at the time and place, from the source and in the manner provided in the Indenture and in such Bond expressed.

Right of Bondowners to Direct Proceedings

Subject to the provisions of the Indenture granting the Credit Enhancer the right to direct the exercise of remedies, the Owners of a majority in aggregate principal amount of the Bonds then

Outstanding shall have the right, at any time, but only with the approval of the Credit Enhancer if the Credit Enhancer has not failed to honor a proper draw under the Credit Facility, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the Indenture, or for the appointment of a receiver or any other proceedings thereunder; provided that the Trustee shall have been provided indemnity satisfactory to it and provided that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture, and provided, further, that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve it in personal liability.

Waivers of Events of Default

The Trustee shall waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; provided that there shall not be waived without the written consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds at their maturity, upon the redemption (including as a result of acceleration) or tender thereof, (b) any Event of Default resulting from non-reinstatement of the interest portion of the Credit Facility within the period provided for in the Credit Facility unless the Credit Enhancer has given written notice to the Trustee that the Credit Facility has been reinstated in full or any Event of Default resulting from written notice from the Credit Enhancer of an "Event of Default" under the Credit Facility unless the Credit Enhancer has given written notice to the Trustee of the rescission of such notice and confirming that the full stated amount of the Credit Facility is available, or (c) any Event of Default in the payment when due of the interest on any such Bonds, unless, prior to such waiver or rescission, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such Event of Default shall have been paid or provided for; provided further (i) that there shall not be waived without the prior written consent of the Credit Enhancer an Event of Default under the Indenture described in clause (d)(ii) under the caption "-Events of Default" above and written rescission of the notice from the Credit Enhancer under clause (d)(ii); (ii) no Event of Default shall be waived without the prior written consent of the Credit Enhancer if it has honored all of its obligations under the Credit Facility; and (iii) no Default involving the nonpayment of the fees, costs, charges or expenses of the Trustee shall be waived without the prior written consent of the Trustee. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Company, the Trustee, the Bondowners and the Credit Enhancer shall be restored to their former positions, rights and obligations under the Indenture, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Application of Moneys in Event of Default

Upon an Event of Default all moneys held or received by the Trustee pursuant to the Indenture or the Credit Facility or pursuant to any right given or action taken under the Indenture shall, after payment of the reasonable fees, costs and expenses of the proceedings resulting in the collection of such moneys, be deposited in the Debt Service Fund (provided, however, Available Moneys, including moneys received under the Credit Facility, shall be used, until Bonds are no longer Outstanding, only for the payment of principal or interest on the Bonds) and all moneys so deposited in the Debt Service Fund shall be applied as follows:

If the principal of all the Bonds shall not have become or shall not have been declared due and payable, all such moneys shall be applied:

First -- to the payment to the persons entitled thereto, all installments of interest then due and payable on the Bonds, other than the Company Bonds, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective Bonds to the extent permitted by law, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second -- to the payment to the persons entitled thereto, the unpaid principal of and redemption premium, if any, on any of the Bonds, other than the Company Bonds, that shall have become due and payable (other than Bonds called for redemption for the payment of which moneys or securities are held pursuant to the Indenture), in the order of their due date, with interest on such principal and redemption premium, if any, at the rate or rates specified in the respective Bonds from the respective dates upon which they became due and payable, and, if the amount available shall not be sufficient to pay in full such principal and redemption premium, if any, due on any particular date, together with such interest, then to the payment ratably, according to the amounts of principal and redemption premium, if any, due on such date, to the persons entitled thereto without any discrimination or privilege;

Third -- to the payment to the Credit Enhancer, of the unpaid principal and interest due on the Pledged Bonds;

Fourth -- to the payment of the reasonable fees, expenses, liabilities and advances incurred or made by the Trustee;

Fifth -- to the payment, to the Credit Enhancer, of any amounts due and owing under the Credit Documents as evidenced by a written certificate of the Credit Enhancer;

Sixth -- to pay the principal of and interest on any Company Bonds; and

Seventh -- to the Company.

If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal, redemption premium, if any, and interest then due and unpaid on all of the Bonds, with interest on such principal and redemption premium, if any, and, to the extent permitted by law, on such interest, at the rate or rates specified in the respective Bonds, without preference or priority of principal, redemption premium or interest over principal, redemption premium or interest or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal, redemption premium, if any, and interest, to the persons entitled thereto, without any discrimination or privilege; except that principal of and interest on Pledged Bonds shall only be paid after Bonds other than Company Bonds have been paid and Company Bonds other than Pledged Bonds shall only be paid after the amounts due the Credit Enhancer under the Credit Documents, as evidenced by a written certificate of the Credit Enhancer, shall have been paid in full.

If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the Indenture then, subject to the preceding

paragraph, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the second paragraph under this heading.

Whenever moneys are to be applied pursuant to the Indenture, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. No moneys in the Credit Facility Account will be applied to the payment of redemption premium on the Bonds or for the payment of principal of or interest on Company Bonds.

Whenever all of the Bonds and interest thereon have been paid pursuant to the terms of the Indenture and all fees, expenses and charges of the Trustee have been paid, any balance remaining in the Funds shall be paid first, to the Credit Enhancer as provided in the Indenture and second, to the Company as provided in the Indenture.

Supplemental Indentures Not Requiring Consent of Bondowners

The Company and the Trustee may from time to time, with the prior written consent of the Credit Enhancer, if required pursuant to the Indenture, but without the consent of or notice to any of the Bondowners, enter into the Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions of the Indenture, so long as the Supplemental Indenture or Supplemental Indentures does not cause the then-current rating on the Bonds, if any, to be lowered, for any one or more of the following purposes:

- (a) to cure any ambiguity, formal defect or omission in the Indenture;
- (b) to grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;
- (c) to subject to the Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement the Indenture or any indenture supplemental thereto in such manner as to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States of America;
- (e) to evidence the appointment of a co-trustee or successor Trustee;
- (f) to make any other change that will become effective on a date on which the Bonds are subject to mandatory tender pursuant to the Indenture;
- (g) to make any other change which, in the sole judgment of the Trustee, does not materially adversely affect the interests of the Bondowners. In exercising such judgment the Trustee may rely on an Opinion of Counsel;
- (h) to make any change which, in the Opinion of Counsel, is necessary to obtain an initial rating on the Bonds from a Rating Agency or to maintain in effect any existing rating from a Rating Agency; or

(i) to modify, amend or supplement the Indenture in any other respect, including in any manner which would otherwise be described below under the caption “–Supplemental Indentures Requiring Consent of Bondowners” if (1) notice of the proposed Supplemental Indenture is given to the Bondowners (in the same manner as notices of redemption are to be given) at least 30 days before the effective date of the Supplemental Indenture and (2) the Bondowners have the right to demand purchase of their Bonds pursuant to the optional tender provisions of the Indenture prior to the effective date of the Supplemental Indenture.

Supplemental Indentures Requiring Consent of Bondowners

Exclusive of Supplemental Indentures covered by the subsection above-captioned “Supplemental Indentures Not Requiring Consent of Bondowners” and subject to the terms and provisions described in this section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding shall have the right from time to time, with the prior written consent of the Credit Enhancer, and, if required pursuant to the Indenture, the Company, anything contained in the Indenture to the contrary notwithstanding, to consent to and approve the execution by the Company and the Trustee of any Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Company for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that nothing shall permit or be construed as permitting without the consent of the Owners of 100% in aggregate principal amount of the Bonds Outstanding, the Company, the Trustee and the Credit Enhancer, (a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Bond issued under the Indenture, or (b) a reduction in the principal amount, redemption premium or any interest payable on any Bond, or (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (d) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture, or (e) any modification of the redemption or tender features of the Bonds or (f) any change which results in the lowering of the then-current rating on the Bonds.

If at any time the Company shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes described above and if the Trustee is provided with sufficient indemnity for its expenses, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Bondowner and the Credit Enhancer (and a copy of such proposed Supplemental Indenture shall be mailed with such notice to the Credit Enhancer). Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Administrative Office of the Trustee for inspection by all Bondowners and a copy of such proposed Supplemental Indenture shall be mailed with such notice to the Credit Enhancer. If within 60 days or such longer period as shall be prescribed by the Company following the mailing of such notice, the Credit Enhancer and the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as provided in the Indenture, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Company from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as permitted and provided by the Indenture, the Indenture shall be and be deemed to be modified and amended in accordance therewith.

Consent of Company to Supplemental Indentures

A Supplemental Indenture under the Indenture which affects any rights or obligations of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of the Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Amendments to Bond Documents and Credit Facility

Amendments, Changes or Modifications to the Bond Documents and Credit Facility Not Requiring Consent of Bondowners. So long as any amendment, change or modification does not cause the then-current rating on the Bonds, if any, to be lowered, the Trustee and the Company, with the prior written consent of the Credit Enhancer, may, without the consent of or notice to the Bondowners, consent to any amendment, change or modification of the Bond Documents (other than the Indenture) and the Credit Facility, as may be required or deemed advisable:

- (i) by the provisions of such documents and the Indenture;
- (ii) for the purpose of curing any ambiguity or formal defect or omission in such documents, or any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondowners. In exercising such judgment, the Trustee may rely on an Opinion of Counsel;
- (iii) to make any other change which will become effective on a date on which the Bonds are subject to mandatory tender pursuant to the Indenture; or
- (iv) to modify, amend or supplement the Bond Documents or the Credit Facility in any other respect, including in any manner which would otherwise be described below under the caption “–Amendments, Changes or Modifications to the Bond Documents and Credit Facility Requiring Consent of Bondowners” if (1) notice of the proposed modification, amendment or supplement is given to the Bondowners (in the same manner as notices of redemption are to be given) at least 30 days before the effective date of the change to the Bond Document or the Credit Facility and (2) the Bondowners have the right to demand purchase of their Bonds pursuant to the Indenture prior to the effective date of the change to the Bond Document or the Credit Facility.

Amendments, Changes or Modifications to the Bond Documents and Credit Facility Requiring Consent of Bondowners. Except as provided for in the preceding subsection, the Trustee and the Company shall not consent to any amendment, change or modification of the Bond Documents (other than the Indenture) or the Credit Facility without the mailing of notice and the obtaining of the written consent of the Credit Enhancer and the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding given and obtained as provided in connection with a Supplemental Indenture which requires the consent of Bondowners; provided, however, that no such amendment, change or modification to such documents shall be entered into without the consent of the Owners of 100% in aggregate principal amount of the Bonds Outstanding, the Company, the Trustee and the Credit Enhancer, which permits, or results in, (a) any change in the timing of payments under or the amounts required to be paid under the Credit Facility, or (b) any other change resulting in the reduction, downgrade or qualification of the then-current credit rating on the Bonds (other than in connection with the delivery of an Alternate Credit Facility under the Indenture). If at any time the Company and the Credit Enhancer shall request the consent of the Trustee to any such proposed amendment, change or modification to such

documents, the Trustee shall cause notice of such proposed amendment, change or modification to such documents to be given in the same manner as provided with respect to Supplemental Indentures requiring the consent of Bondowners. Such notice shall briefly set forth the nature of such proposed amendment, change or modification to such documents and shall state that copies of the same are on file at the Administrative Office of the Trustee for inspection by all Bondowners and a copy of such proposed amendment, change or modification to such document shall be mailed with such notice to the Credit Enhancer. The Trustee shall not be obligated to consent to any amendment, change or modification that, in the reasonable judgment of the Trustee, is prejudicial to the rights of the Trustee.

Satisfaction and Discharge of the Indenture

If the Company shall pay the principal of, redemption premium, if any, and interest on all of the Bonds Outstanding in accordance with their terms, or shall provide for such payment as provided in the Indenture (see “–Defeasance” below), and if the Company shall also pay or cause to be paid all other sums payable under the Indenture by the Company, then and in that case the Indenture and the estate and rights granted under the Indenture shall cease, terminate and become null and void, and thereupon the Trustee shall, upon Written Request of the Company and an Opinion of Counsel, each stating that in the opinion of the signers all conditions precedent to the satisfaction and discharge of the Indenture have been complied with, forthwith execute proper instruments as may be reasonably requested by the Company acknowledging satisfaction of and discharging the Indenture and the lien thereof; provided that, with respect to Bonds for which payment has been provided at the time but which has not in fact been paid, the liability of the Company in respect of such Bonds shall continue provided that the Owners thereof shall thereafter be entitled to payment only out of the moneys or Government Securities deposited with the Trustee as provided in the Indenture. The satisfaction and discharge of the Indenture shall be without prejudice to the rights of the Trustee to charge and be reimbursed by the Company and the Company for any expenditures that it may thereafter incur in connection therewith.

Notwithstanding the release and discharge of the lien of the Indenture as described above, those provisions of the Indenture relating to the maturity of the Bonds, interest payments and dates thereof, tender and purchase provisions, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost, stolen or Undelivered Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust, redemption of Bonds and the duties of the Trustee, the Bond Registrar, the Paying Agent and the Remarketing Agent in connection with all of the foregoing, remain in effect and shall be binding upon the Trustee, the Company and the Bondowners.

The Company is authorized under the Indenture to accept a certificate by the Trustee that the whole amount of the principal, redemption premium, if any, and interest so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with the provisions of the Indenture summarized in the subsection below captioned “–Defeasance” as evidence of satisfaction of the Indenture, and upon receipt thereof shall cancel and erase the inscription of the Indenture from its records.

All moneys, funds, securities or other property remaining on deposit in all Funds or Accounts established under the Indenture (other than said moneys or Government Securities or other investments deposited in trust as described in the subsection below) shall, upon the full satisfaction of the Indenture, forthwith be transferred, paid over and distributed to the Credit Enhancer and the Company in the manner provided in the Indenture.

If the amount of interest is not determinable for any period, interest will be calculated (on a preliminary basis) at the applicable Maximum Rate.

Defeasance

If (i)(A) the Trustee has received a written notice from each Rating Agency which has a current rating on the Bonds, that actions taken under the provision of the Indenture summarized in this subsection would not result in a reduction or withdrawal of the current Rating Agency rating on the Bonds or (B) if the Bonds are not then rated, the Trustee has received an unqualified Opinion of Counsel, expert on bankruptcy matters and acceptable to the Trustee, to the effect that payment to the Owners from moneys deposited under this provision of the Indenture would not be avoidable as preferential payments under Section 544, 547 or 550 of the United States Bankruptcy Code in the event of the filing of a petition thereunder by or against the Company, and (ii) the Company shall pay or provide for the payment (other than by the Credit Enhancer) of any Bond or Bonds Outstanding in any one or more of the following ways:

(a) by paying or causing to be paid, from Available Moneys, the principal of (including redemption premium, if any) and interest on such Bonds, as and when the same become due and payable;

(b) by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, at or before maturity, Available Moneys in an amount sufficient to pay or redeem (when redeemable) Bonds (including the payment of redemption premium, if any, and interest payable on such Bonds to the maturity or redemption date thereof), provided that such moneys, if invested, shall be invested in Government Securities which are not subject to redemption and payment prior to maturity except at the option of the holder thereof ("Non-Callable Government Securities") in an amount and with maturities, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on such Bonds at or before their respective maturity dates, to pay the interest thereon as it comes due;

(c) by delivering to the Trustee, for cancellation by it, such Bonds; or

(d) by depositing with the Trustee, in trust, Non-Callable Government Securities acquired with Available Moneys in such amounts as are certified to the Trustee by a written report of an independent certified public accountant or such other person as is acceptable to the Trustee to be fully sufficient, together with other Available Moneys deposited therein and together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, to pay or redeem (when redeemable) and discharge the indebtedness on such Bonds at or before their respective maturity dates, to pay the interest thereon as it comes due;

then such Bond or Bonds shall be deemed to be paid within the meaning of the Indenture and shall cease to be entitled to any lien, benefit or security under the Indenture, except for the purposes of any such payment from such moneys or Government Securities and except for the purposes of registration, transfer and exchange of such Bonds. If all the Bonds are not to be redeemed within 30 days, the Trustee shall mail, as soon as practicable, in the manner prescribed by the Indenture, a notice to the Owners of such Bonds that the deposit required by (b) or (d) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with the Indenture and stating the maturity or redemption

date upon which moneys are to be available for the payment of the principal of or redemption price, if applicable, on said Bonds as specified in (b) or (d) above.

Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clauses (b) or (d) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities and as to Bonds subject to interest rate adjustment prior to maturity which shall be redeemed prior to the next Interest Mode Adjustment Date, proper notice of such redemption shall have been given in accordance with the Indenture or irrevocable instructions shall have been given to the Trustee to give such notice at the time when such notice may be given pursuant to the provisions of the Indenture.

Notwithstanding any provisions of any other section of the Indenture which may be contrary to the provisions of the Indenture relating to defeasance, all Available Moneys or Non-Callable Government Securities set aside and held in trust pursuant to the provisions of the Indenture relating to defeasance for the payment of Bonds (including redemption premium thereon, if any, and interest) shall be applied to and used solely for the payment of the particular Bonds (including redemption premium thereon, if any, and interest) with respect to which such Available Moneys and Non-Callable Government Securities have been so set aside in trust.

The Company may at any time surrender to the Trustee for cancellation by it any Bond previously authenticated and delivered which the Company may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

TAX MATTERS

The following is a summary of certain anticipated federal income tax consequences of the purchase, ownership and disposition of the Bonds. The summary is based upon the provisions of the Code, the regulations promulgated thereunder and the judicial and administrative rulings and decisions now in effect, all of which are subject to change or possible differing interpretations. The summary does not purport to address all aspects of federal income taxation that may affect particular investors in light of their individual circumstances or certain types of investors subject to special treatment under the federal income tax laws. Potential purchasers of the Bonds should consult their own tax advisors in determining the federal, state or local tax consequences to them of the purchase, holding and disposition of the Bonds.

Although there are not any regulations, published rulings or judicial decisions involving the characterization for federal income tax purposes of securities with terms substantially the same as the Bonds, Counsel to the Company has advised the Company that the Bonds will be treated for federal income tax purposes as evidences of indebtedness of the Company and not as an ownership interest in the trust estate securing the Bonds or as an equity interest in the Company or any other party, or in a separate association taxable as a corporation. Interest on the Bonds is includable in gross income for federal income tax purposes under Section 103 of the Code. Interest on the Bonds will be fully subject to federal income taxation. In general, interest paid on the Bonds and recovery of accrued market discount, if any, will be treated as ordinary income to a bondholder, and principal payments will be treated as a return of capital. The Code contains special federal income tax rules for “real estate mortgage investment conduits.” The Company does not intend to treat the arrangement by which the trust estate secures the Bonds as “real estate mortgage investment conduits.”

The Bonds will not (a) represent interest in “qualifying real property loans,” within the meaning of Section 593(d) of the Code, (b) constitute “loans secured by an interest in real property,” within the

meaning of Section 7701(a)(19)(C)(v) of the Code, (c) constitute “real estate assets” or “Government securities,” within the meaning of Section 856(c)(5)(B) of the Code, or (d) constitute “Government securities,” within the meaning of Section 851(b)(3)(A)(i) of the Code. Interest on the Bonds will not be considered “interest on obligations secured by mortgages on real property or on interests in real property,” within the meaning of Section 856(c)(3)(B) of the Code.

Market Discount. Any owner who purchases a Bond at a price which includes market discount in excess of a prescribed *de minimis* amount (*i.e.*, at a purchase price that is less than its adjusted issue price in the hands of an original owner) will recognize gain upon receipt of each scheduled or unscheduled principal payment. In particular, such owner will generally be required (a) to allocate each such principal payment to accrued market discount not previously included in income and to recognize ordinary income to that extent and to treat any gain upon sale or other disposition of such a Bond as ordinary income to the extent of any remaining accrued market discount (under this caption) or (b) to elect to include such market discount in income currently as it accrues on all market discount instruments acquired by such an owner on or after the first day of the taxable year to which such election applies.

The Code authorizes the Treasury Department to issue regulations providing for the method for accruing market discount on debt instruments the principal of which is payable in more than one installment. Until such time as regulations are issued by the Treasury Department, certain rules described in the legislative history of the Tax Reform Act of 1986 will apply. Under those rules, market discount will be included in income either (a) on a constant interest basis or (b) in proportion to the accrual of stated interest.

An owner of a Bond who acquires such Bond at a market discount also may be required to defer, until the maturity date of such Bond or its earlier disposition in a taxable transaction, the deduction of a portion of the amount of interest that the owner paid or accrued during the taxable year on indebtedness incurred or maintained to purchase or carry a Bond in excess of the aggregate amount of interest (including original issue discount) includable in such owner’s gross income for the taxable year with respect to such Bond. The amount of such net interest expense deferred in a taxable year may not exceed the amount of market discount accrued on the Bond for the days during the taxable year on which the owner held the Bond and, in general, would be deductible when such market discount is includable in income. The amount of any remaining deferred deduction is to be taken into account in the taxable year in which the Bond matures or is disposed of in a taxable transaction. In the case of a disposition in which gain or loss is not recognized in whole or in part, any remaining deferred deduction will be allowed to the extent gain is recognized on the disposition. This deferral rule does not apply if the Bondowner elects to include such market discount in income currently as it accrues on all market discount obligations acquired by such Bondowner in that taxable year or thereafter.

Market Premium. A subsequent purchaser of a Bond who purchases such Bond at a cost greater than its then principal amount will be considered to have purchased such Bond at a market premium. Under Section 171 of the Code, such a purchaser must amortize the amount of such market premium using constant yield principles based on the purchaser’s yield to maturity. Amortizable market premium is generally treated as an offset to interest income, and under Section 1016(a) of the Code a reduction in basis of the Bond is required for amortizable bond premium that is applied to reduce interest payments. Purchasers of any Bond who acquire such Bond at a premium should consult with their own tax advisors with respect to the determination and treatment of amortizable premium for federal income tax purposes and with respect to state and local tax consequences of owning such Bond.

Sale or Redemption of Bonds. A Bondowner’s tax basis for a Bond is the price such owner pays for the Bond plus amounts of any original issue discount included in income, reduced on account of any

payments received (other than “qualified periodic interest” payments) and any amortized premium. Gain or loss recognized on a sale, exchange or redemption of a Bond, measured by the difference between the amount realized and the Bond’s basis as so adjusted, will generally give rise to capital gain or loss if the Bond is held as a capital asset.

Backup Withholding. A Bondowner may, under certain circumstances, be subject to “backup withholding” at the rate of 28% for tax years through 2010 and 31% for tax years 2011 and thereafter with respect to interest or original issue discount on the Bonds. This withholding generally applies if the owner of a Bond (a) fails to furnish the Trustee or other payor with its taxpayer identification number; (b) furnishes the Trustee or other payor an incorrect taxpayer identification number; (c) fails to report properly interest, dividends or other “reportable payments” as defined in the Code; or (d) under certain circumstances, fails to provide the Trustee or other payor with a certified statement, signed under penalty of perjury, that the taxpayer identification number provided is its correct number and that the holder is not subject to backup withholding. Backup withholding will not apply, however, with respect to certain payments made to Bondowners, including payments to certain exempt recipients (such as certain exempt organizations) and to certain Nonresidents (as defined below). Owners of the Bonds should consult their tax advisors as to their qualification for exemption from backup withholding and the procedure for obtaining the exemption.

The amount of “reportable payments” for each calendar year and the amount of tax withheld, if any, with respect to payments on the Bonds will be reported to the Bondowners and to the Internal Revenue Service.

Foreign Bondowners. Under the Code, interest income with respect to Bonds held by nonresident alien individuals, foreign corporations or other non-United States persons (“Nonresidents”) generally will not be subject to the 30% United States withholding tax if the Department (or other person who would otherwise be required to withhold tax from such payments) is provided with an appropriate statement that the beneficial owner of the Bonds is a Nonresident. The withholding tax may be reduced or eliminated by an applicable tax treaty, if any. Notwithstanding the foregoing, if any such payments are effectively connected with a United States trade or business conducted by a Nonresident Bondowner, they will be subject to regular United States income tax, but will ordinarily be exempt from United States withholding tax.

ERISA. The Employees Retirement Income Security Act of 1974, as amended (“ERISA”), and the Code generally prohibit certain transactions between a qualified employee benefit plan under ERISA or tax-qualified retirement plans and individual retirement accounts under the Code (collectively, the “Plans”) and persons who, with respect to a Plan, are fiduciaries or other “parties in interest” within the meaning of ERISA or “disqualified persons” within the meaning of the Code. All fiduciaries of Plans, in consultation with their advisors, should carefully consider the impact of ERISA and the Code on an investment in any Bonds.

In all events, all investors should consult their own tax advisors in determining the federal, state, local and other tax consequences to them of the purchase, ownership and disposition of the Bonds.

APPROVAL OF LEGAL MATTERS

Certain legal matters will be passed on for the Company by its counsel, Husch Blackwell Sanders LLP, Kansas City, Missouri, for the Credit Enhancer by Polsinelli Shalton Flanigan Suelthaus PC, Overland Park, Kansas, and for the Underwriters by Gilmore & Bell, P.C., Kansas City, Missouri.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions on the legal issues explicitly addressed therein. By rendering the legal opinion, the opinion giver does not become an insurer or guarantor of an expression of professional judgment of the transaction opined upon, or of the future performance of parties to such transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

NO LITIGATION

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before any court, public board or body, pending or, to the knowledge of the Company, threatened against the Company restraining or enjoining the execution or delivery of the Bonds, or in any way contesting or affecting the validity thereof or the validity or enforceability of the Company's obligations under the Bond Documents.

UNDERWRITING

The Underwriters, pursuant to a purchase agreement with the Company, have agreed, subject to certain conditions, to purchase the Bonds at the aggregate purchase price of 99.2% of the Bonds, resulting in an Underwriter's discount of \$38,479 out of which the Underwriters will pay certain fees and expenses and receive compensation in the amount of \$979. The obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions set forth in the purchase agreement between the Underwriters and the Company. The Bonds may be sold to certain dealers, banks and others at prices lower than the initial offering prices, and such initial offering prices may be changed, from time to time by the Underwriters. Under the purchase agreement, the Company has agreed to indemnify the Underwriters under certain circumstances against certain liabilities, including liabilities under federal securities laws.

RATINGS

Standard & Poor's Rating Group ("S&P") has assigned the Bonds the ratings of "A+/A-1". Such ratings reflect only the view of the rating agency, and an explanation of the significance of such ratings may only be obtained from the rating agency. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by the rating agency if, in its judgment, circumstances so warrant. Any downward revision or withdrawal of a rating may have an adverse effect upon the market price of the Bonds.

MISCELLANEOUS

The summaries of the Indenture, the Credit Facility and the Credit Facility Agreement and the descriptions of the Bonds, the Company and the Project are only brief outlines and do not purport to be complete or definitive. Reference is hereby made to such documents for the complete provisions thereof.

Any statements in this Official Statement involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Company, the Credit Enhancer or the Underwriters and the purchasers or owners of the Bonds.

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The Company has duly authorized the execution and delivery of this Official Statement.

HICKOK MASTER LIMITED PARTNERSHIP,
a Kansas limited partnership

By: _____
Name: Timothy W. Hickok
Title: General Partner

Appendix A

INFORMATION REGARDING THE CREDIT ENHANCER

M&I MARSHALL & ILSLEY BANK

M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin (“M&I Bank”) is a state banking corporation organized under the laws of the State of Wisconsin. Its principal offices and banking facility are located at 770 North Water Street, Milwaukee, Wisconsin 53202, telephone (414) 765-7700. Founded in 1847, M&I Bank is the oldest continuously operating bank in the State of Wisconsin. It is the largest bank owned by Marshall & Ilsley Corporation. As of September 30, 2008, M&I Bank had total assets of \$56.88 billion, total deposits of \$34.12 billion and total equity capital of \$5.67 billion based on regulatory accounting principles. As of December 31, 2007, M&I Bank had total assets of \$53.72 billion, total deposits of \$33.99 billion and total equity capital of \$5 billion based on regulatory accounting principles. M&I Bank had net loss of \$197.32 million for the nine months ended September 30, 2008 and net income of \$423.64 million for the twelve months ended December 31, 2007.

One hundred percent (100%) of the outstanding stock of M&I Bank is owned by M&I LLC, which was formerly known as Marshall & Ilsley Corporation, a publicly held and registered bank holding company under the Bank Holding Company Act of 1956, as amended. Marshall & Ilsley Corporation is also certified as a financial holding company under the Gramm-Leach-Bliley Act of 1999, and its common stock is registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Marshall & Ilsley Corporation files annual and other reports, containing audited, consolidated financial and other information, with the Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549, and copies of these reports may be obtained from the Commission upon payment of copying charges, examined at the Commission’s offices without charge, or accessed free of charge on the Commission’s website, <http://www.sec.gov>. THE CREDIT FACILITY IS AN OBLIGATION OF M&I BANK AND NOT OF MARSHALL & ILSLEY CORPORATION.

On November 1, 2007, Marshall & Ilsley Corporation completed the separation of Marshall & Ilsley Corporation, which owns and operates M&I Bank, and Metavante Corporation. As a result of the separation, M&I Bank is 100% owned by M&I LLC, which in turn is 100% owned by Marshall & Ilsley Corporation. Also in connection with the separation, Metavante Corporation paid off intercompany indebtedness owed to Marshall & Ilsley Corporation of \$982 million and contributed \$1.665 billion in cash to Marshall & Ilsley Corporation. In connection with the separation, 75% of Metavante Corporation’s common stock was issued to shareholders of Marshall & Ilsley Corporation and 25% was issued to an equity fund organized by Warburg Pincus in return for an investment of \$625 million.

On October 28, 2008, Marshall & Ilsley Corporation issued a press release announcing it had received preliminary approval to participate in the U.S. Treasury’s Capital Purchase Program (the “CPP”) in the amount of approximately \$1.7 billion in capital. A copy of the press release was filed by Marshall & Ilsley Corporation with the Securities and Exchange Commission on Form 8-K on October 28, 2008. The details of that participation have not yet been finalized.

M&I Bank files quarterly reports called “Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices” (“Call Reports”). M&I Bank’s Call Reports are publicly available at the FDIC Disclosure Group, Room F-518, 550 17th Street, N.W., Washington, D.C. 20429 as well as at the FDIC’s web site. The Call Reports of M&I Bank, and any amendments or supplements

thereto, for the period ended September 30, 2008, are incorporated herein by reference. Any subsequent Call Reports filed by M&I Bank prior to the date hereof are incorporated herein by reference.

M&I Bank will supply without charge a copy of the Marshall & Ilsley Corporation Form 10-K for the year ended December 31, 2007, any subsequent reports on Form 10-Q, and any reports on Form 8-K, in each case as filed with the Securities and Exchange Commission pursuant to the Exchange Act, and the publicly available portions of the most recent quarterly Call Report of M&I Bank delivered to the Federal Deposit Insurance Corporation, to any person to whom this Official Statement is delivered upon written request to: Secretary, Marshall & Ilsley Corporation, 770 North Water Street, Milwaukee, Wisconsin 53202. Telephone requests should be directed to (414) 765-7700. Marshall & Ilsley Corporation's Form 10-K for the period ended December 31, 2007 and any subsequent periodic or current reports of Marshall & Ilsley Corporation as filed with the Securities and Exchange Commission pursuant to the Exchange Act are incorporated herein by reference.

The information contained in this Appendix relates to and has been obtained from M&I Bank. The information concerning Marshall & Ilsley Corporation and M&I Bank contained or referred to herein is furnished solely to provide limited introductory information regarding Marshall & Ilsley Corporation and M&I Bank and does not purport to be comprehensive. Such information is qualified in its entirety by the detailed information appearing in the documents and financial statements referenced above.

The delivery hereof shall not create any implication that there has been no change in the affairs of Marshall & Ilsley Corporation or M&I Bank since the date hereof, or that information contained in or referred to in this Appendix is correct at any time subsequent to its date.

Appendix B

CERTAIN DEFINITIONS

In addition to terms defined elsewhere in this Official Statement, the following are definitions of certain terms used in the Indenture and this Official Statement.

“Accounts” means the accounts created pursuant to the Indenture.

“Act of Bankruptcy” means, as to the Company, any of the following:

(a) the commencement by the Company of a voluntary case under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar laws;

(b) the filing of a petition with a court having jurisdiction over the Company to commence an involuntary case against the Company under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar laws, and such petition is not discharged within 60 days of the filing thereof;

(c) the Company shall admit in writing its inability to pay its debts generally as they become due;

(d) a receiver, trustee or liquidator of the Company shall be appointed in any proceeding brought against the Company;

(e) assignment by the Company of all or substantially all of its assets for the benefit of its creditors; or

(f) the entry by the Company into an agreement of composition with its creditors.

“Additional Payments” means the additional payments to be made by the Company under the Indenture (see “THE INDENTURE– Additional Payments”).

“Administrative Office” means (i) with respect to the initial Trustee and Tender Agent, for notice and administrative purposes, initially, One Security Plaza, 701 Minnesota Avenue, Suite 206, Kansas City, Kansas 66117, Attention: Corporate Trust Department, and (ii) with respect to any successor Trustee or Tender Agent, its office for notice and administration purposes designated as such by the successor Trustee or Tender Agent.

“Alternate Credit Facility” means any alternate credit facility provided by one or more Persons (if provided by two or more Persons, their obligations may be on a joint basis or a several basis), designated and qualified as such and provided pursuant to the Indenture. The renewal or extension of the Termination Date of the existing Credit Facility does not constitute an Alternate Credit Facility if the Trustee receives written evidence from the Credit Enhancer, in a form reasonably satisfactory to the Trustee, of the renewal or extension no later than the 25th day prior to the then applicable Termination Date.

“Alternate Credit Facility Date” means the effective date of any Alternate Credit Facility delivered to the Trustee pursuant to the Indenture.

“Annual Mode” means an Interest Mode during which the interest rate on the Bonds is determined at twelve-month intervals, as provided in the Indenture, except that the first period will be from the Interest Mode Adjustment Date to, but not including, the next Rate Adjustment Date.

“Authorized Company Representative” means the person at the time designated to act on behalf of the Company as evidenced by a written certificate furnished to the Credit Enhancer and the Trustee containing the specimen signature of such person and signed on behalf of the Company by the General Partner (if the Company is a corporation, an authorized officer of the Company, or if a limited liability company, the manager or managing member). Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties and exercise all powers of an Authorized Company Representative. Until otherwise designated by the Company, the Authorized Company Representative is Timothy W. Hickok.

“Authorized Credit Enhancer Representative” means the person at the time designated to act on behalf of the Credit Enhancer as evidenced by a written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Credit Enhancer by a Senior Vice President, First Vice President or Vice President of the Credit Enhancer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties and exercise all powers of an Authorized Credit Enhancer Representative.

“Authorized Denominations” means (i) in the case of Bonds in a Weekly Mode or Monthly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) in the case of Bonds in a Semiannual Mode, Annual Mode or Multiyear Mode, \$5,000 or any integral multiple thereof, provided that if the Credit Facility is not exempt from registration under the Securities Act of 1933, as amended, and has not been registered under the Securities Act of 1933, as amended, then the Authorized Denomination shall be \$100,000 and any integral multiple of \$5,000 in excess thereof; or (iii) in the case of a Bond which is a Pledged Bond, \$5,000 or any integral multiple thereof.

“Available Moneys” means (i) moneys that have been paid to the Trustee pursuant to payments under the Credit Facility and that have been held in the Credit Facility Account and not commingled with other funds that do not constitute Available Moneys, and proceeds from the investment thereof; (ii) Remarketing Proceeds; and (iii) moneys delivered to the Trustee and accompanied by a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Company, the General Partner, any other partner or guarantor of the Company were to become a debtor in a proceeding under the Bankruptcy Code: (i) payment of such money to holders of the Bonds would not constitute an avoidable preference under Section 547 of the Bankruptcy Code, (ii) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Bonds, and (iii) such money is not subject to inclusion in a bankrupt’s estate under Section 541 of the Bankruptcy Code.

“Available Moneys Account” means the account by that name in the Revenue Fund created pursuant to the Indenture.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“Bond Documents” means the Indenture, the Bonds, Remarketing Agreement and the Bond Purchase Agreement.

“Bond Issuance Date” means the date of the initial issuance and delivery of the Bonds.

“Bond Payments” means the Bond Payments described in the Indenture.

“Bond Pledge Agreement” means the Pledge and Security Agreement dated as of December 1, 2008, between the Company and the Credit Enhancer, and any similar agreement between the Company and the Credit Enhancer with respect to the issuance of an Alternate Credit Facility, as amended, supplemented or restated from time to time.

“Bond Register” means the registration books of the Company kept by the Trustee to evidence the registration and transfer of Bonds.

“Bond Registrar” means the Trustee when acting as such.

“Bondowner” or “Owner” or “Registered Owner” means the person in whose name such Bond is registered on the Bond Register.

“Business Day” means a day which is not a Saturday, Sunday or any other day on which banking institutions in New York, New York, or the city or cities in which the Administrative Office or Payment Office of the Trustee, or the Administrative Office or Payment Office of the Tender Agent, or principal office of the Remarketing Agent or the Credit Enhancer is located, are required or authorized to close.

“Company Bonds” means (i) Bonds owned or held by the Company, or by the Trustee or the Tender Agent, or the agent of either of them, for the account of the Company, including, but not limited to, Pledged Bonds, or (ii) Bonds which the Company has notified the Trustee in writing, or which, to the actual knowledge of the Trustee, were purchased by another Person for the account of the Company, including, but not limited to, Pledged Bonds.

“Credit Documents” means the Credit Facility Agreement, the Mortgage, the Bond Pledge Agreement, the Environmental Indemnity Agreement and the Guaranty Agreement, in each case as the same may be amended, restated or supplemented, and any other documents securing the obligations of the Company to the Credit Enhancer from time to time.

“Credit Enhancer” means initially M&I Marshall & Ilsley Bank, a Wisconsin banking corporation, issuer of the Credit Facility, and any provider or providers of an Alternate Credit Facility.

“Credit Facility” means initially the irrevocable direct-pay letter of credit, and any renewals in accordance with the provisions of the Credit Facility and the Credit Facility Agreement, issued by the Credit Enhancer, and thereafter any Alternate Credit Facility.

“Credit Facility Account” means the account by that name in the Revenue Fund created in the Indenture.

“Credit Facility Agreement” means the Letter of Credit and Reimbursement Agreement dated as of December 1, 2008, between the Company and the Credit Enhancer, as from time to time amended and

supplemented in accordance with its provisions, and any similar agreement or agreements with respect to the issuance of an Alternate Credit Facility.

“Debt Service Fund” means the fund by that name created in the Indenture.

“Default” means any event or condition which, or with the giving of any requisite notice or upon the passage of any requisite time period or upon the occurrence of both, would constitute an Event of Default under the Indenture.

“Default Rate” means the interest rate announced from time to time by the Trustee (or a banking affiliate of the Trustee) as its prime rate or base rate on commercial loans (which rate fluctuates as and when said prime rate or base rate changes) plus 4.0%.

“Eligible Account” means an account that is either (i) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor’s short-term debt rating of at least “A-2” (or, if no short-term debt rating, a long-term debt rating of “BBB+”); or (ii) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit, which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that an account required to be an “Eligible Account” no longer complies with the requirement set forth herein, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such account to another financial institution such that the Eligible Account requirement will again be satisfied.

“Environmental Indemnity Agreement” means the Indemnity Agreement dated as of December 1, 2008, from the Company and the Guarantors for the benefit of the Credit Enhancer, as amended, supplemented or restated from time to time.

“Event of Default” means any event or occurrence as defined in the Indenture.

“Funds” means the funds created pursuant to the Indenture.

“General Partner” means Timothy W. Hickok, and any successors as general partner or managing general partner of the Company.

“Government Securities” means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Guarantors” means Timothy W. Hickok, Lisa Hickok and Pinegate West Associates, Limited Partnership, a Kansas limited partnership, or any other guarantor or guarantors as required under the Credit Facility Agreement from time to time.

“Guaranty Agreement” means the Guaranty dated as of December 1, 2008, executed by the Guarantors for the benefit of the Credit Enhancer, as from time to time amended and supplemented in accordance with its terms.

“Immediate Notice” means notice by telephone, telegram, telex, telecopier or other telecommunication device (but excluding internet e-mail) to such phone numbers or addresses as are specified in the Indenture or such other phone number or address as the addressee shall have directed in writing, promptly followed by written notice by first-class mail postage prepaid to such addresses.

“Indenture” means the Trust Indenture as originally executed by the Company and the Trustee, as from time to time amended, supplemented or restated by Supplemental Indentures in accordance with the provisions of the Indenture.

“Interest Account” means the account by that name in the Debt Service Fund created pursuant to the Indenture.

“Interest Mode” means a period of time relating to the frequency with which the interest rate on the Bonds is determined pursuant to the Indenture, which Interest Mode may be a Weekly Mode, a Monthly Mode, a Semiannual Mode, an Annual Mode or a Multiyear Mode. Pledged Bonds bear interest at the Pledged Bond Rate and are not subject to such Interest Mode descriptions.

“Interest Mode Adjustment Date” means a date on which the Interest Mode is changed from one Interest Mode to a different Interest Mode, and such date shall be an Interest Payment Date.

“Interest Mode Adjustment Notice” means the notice of mandatory tender in connection with a new Interest Mode with respect to the Bonds in accordance with the Indenture.

“Interest Payment Date” means the date on which an interest installment is required to be paid on the Bonds to the Owners thereof, (i) with respect to all Bonds other than Pledged Bonds, (1) as to the first Interest Period, January 2, 2009; (2) as to any Weekly Mode or Monthly Mode, the first Business Day of each month; (3) as to any Semiannual Mode, Annual Mode or Multiyear Mode, each June 1 and December 1, commencing with the first June 1 or December 1 following the Interest Mode Adjustment Date, or the next succeeding Business Day thereafter if any June 1 or December 1 is not a Business Day; and (4) an Interest Mode Adjustment Date; and (ii) with respect to Pledged Bonds, the first Business Day of each calendar month and the date of sale of Pledged Bonds.

“Interest Period” means the period from and including each Interest Payment Date for an Interest Mode to and including the day immediately preceding the following Interest Payment Date for such Interest Mode, except that the first Interest Period shall be the period from and including the date of original delivery of the Bonds to and including the day immediately preceding the first Interest Payment Date for the Bonds.

“Investment Securities” means any of the following securities purchased in accordance with the Indenture, if and to the extent the same are at the time legal for investment of the funds being invested:

- (a) Government Securities;
- (b) Federal Home Loan Mortgage Corporation (Freddie Mac) and Farm Credit Banks (Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) participation certificates and senior debt obligations which bear interest at a fixed rate and are fully amortizing;
- (c) Federal National Mortgage Association (Fannie Mae) mortgage backed securities and senior debt obligations that bear interest at a fixed rate and are fully amortizing;
- (d) Student Loan Marketing Association (Sallie Mae) letter of credit backed issues and senior debt obligations;

(e) federal funds, certificates of deposit, time deposits and bankers' acceptances (having original maturities of not more than 365 days) of any bank (including the Trustee and its affiliates) the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) have been rated "AAA" or "A-1+" (or equivalent) by the Rating Agency at the time of purchase;

(f) certificates of deposit issued by institutions that are members of the Federal Deposit Insurance Corporation (including without limitation, the Trustee or any bank affiliated with the Trustee);

(g) commercial paper (having original maturities of not more than 270 days) rated "A-1" at the time of purchase or its equivalent by either Rating Agency;

(h) obligations rated "AAA" or "A-1+" at the time of purchase or its equivalent by the Rating Agency, or unrated general obligations of any Person that has outstanding other unsecured, uninsured and unguaranteed obligations that are so rated by either Rating Agency;

(i) repurchase agreements with any institution the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated "AAA" at the time of purchase or its equivalent by either Rating Agency;

(j) any shares in money market mutual funds provided such money market mutual funds are rated at least "AAAm" or "AAAm-G" (or equivalent) by the Rating Agency; and

(k) any other investment approved by the Credit Enhancer in writing.

"Letter of Representations" means, collectively, the blanket letters from the Company and the Trustee to the Securities Depository representing the matters necessary to qualify the Bonds pursuant to the Indenture.

"Mandatory Purchase Date" means each date designated by the Credit Enhancer for purchase of the Bonds in accordance with the provisions of the Indenture.

"Maximum Rate" means, with respect to Bonds that are not Pledged Bonds, the rate utilized in the Credit Facility for purposes of computing the interest component thereof.

"Monthly Mode" means an Interest Mode during which the interest rate on the Bonds is determined in monthly intervals as set forth in the Indenture, except that the first period will be from the Interest Mode Adjustment Date to, but not including, the next Rate Adjustment Date.

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Company, with the prior written approval of the Credit Enhancer, by written notice to the Trustee.

“Mortgage” means the Mortgage and Security Agreement dated December 1, 2008, from the Company to the Credit Enhancer, or any similar agreement executed for the benefit of the Credit Enhancer, as the same may from time to time be amended, modified or supplemented in accordance with its terms.

“Multiyear Mode” means an Interest Mode during which the interest rate on the Bonds is determined at intervals of integral (greater than one) multiples of twelve months (except that the first period will be from the Interest Mode Adjustment Date to, but not including, the next Rate Adjustment Date) or is fixed to the final maturity of the Bonds, as provided in the Indenture.

“New York Time” means the time on any given day in the City of New York, New York, whether such time be Eastern Standard Time or Eastern Daylight Savings Time.

“Notice of Election to Tender Bonds” means the Notice of Election to Tender Bonds in substantially the form attached to the Indenture delivered by a Bondowner to the Tender Agent pursuant to which a demand for the purchase of Bonds on the Tender Date is made.

“Opinion of Counsel” means a written opinion of an attorney or firm of attorneys addressed to the Company, the Trustee, and the Credit Enhancer, who may (except as otherwise expressly provided in the Indenture) be counsel to the Company, the Purchaser, the Credit Enhancer or the Trustee, and who is acceptable to the Company, the Trustee and the Credit Enhancer.

“Outstanding” when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered under the Indenture except:

- (a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation pursuant to the Indenture;
- (b) Bonds that are deemed to have been paid in accordance with the Indenture;
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to the Indenture;
- (d) Undelivered Bonds; and
- (e) For purposes of any consent or other action to be taken by the Owner of a specified percentage of Bonds under the Indenture, Company Bonds. Notwithstanding the foregoing, Company Bonds that have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Company.

“Paying Agent” means the Tender Agent as to all Tendered Bonds, the Trustee as to all other Bonds, and any other bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated by the Indenture or any Supplemental Indenture as paying agent for the Bonds at which the principal of, and redemption premium, if any, on, such Bonds shall be payable.

“Payment Office” means, (i) with respect to the initial Trustee and Tender Agent, for payment, registration, maintenance of the Bond Register, tender of Bonds and exchange purposes, initially One

Security Plaza, 701 Minnesota Avenue, Suite 206, Kansas City, Kansas 66117, Attention: Corporate Trust Department, and (ii) with respect to any successor Trustee or Tender Agent, its office or offices for those purposes designated as such by the successor Trustee or Tender Agent

“Person” and “person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated organization, a limited liability company, or a government or any agency or political subdivision thereof.

“Placement Date” means any date on which a Person purchases a Pledged Bond from the Company designated by the Remarketing Agent pursuant to the Remarketing Agreement or is sold by the Company.

“Pledged Bonds” means any Bonds purchased by the Company with payments made under the Credit Facility, which Bonds are registered in the name of the Company and held by the Trustee on behalf of the Credit Enhancer pursuant to the terms of the Bond Pledge Agreement, until such time as such Bonds are sold by the Company or by the Remarketing Agent.

“Pledged Bond Rate” means the annual rate of interest payable with respect to each Pledged Bond, which shall be equal to the interest rate set forth in the Credit Facility Agreement.

“Principal Account” means the account by that name in the Debt Service Fund created pursuant to the Indenture.

“Principal Payment Date” means the maturity date or redemption date (including as a result of acceleration) of any Bond.

“Proceeds Fund” means the fund by that name created by the Indenture.

“Project” means collectively, an existing housing development located at 9002 W 64th Terrace in the City of Merriam, Johnson County, Kansas, known as the Pinegate East Apartments, and an existing housing development located at 1008 SW Fleming Court in the City of Topeka, Shawnee County, Kansas, known as the Fleming Court Apartments., as further described under the heading “THE COMPANY AND THE PROJECT.”

“Purchase Agreement” means the Bond Purchase Agreement between the Company and the Underwriters.

“Purchase Fund” means the fund by that name created by the Indenture.

“Qualified Institutional Buyer” means a “qualified institutional buyer” as defined in Rule 144A (17 C.F.R. §230.144A(a)(i)) promulgated under the Securities Act of 1933.

“Rate Adjustment Date” means the date as of which the interest rate determined for an Interest Mode shall be effective, which (i) for the Weekly Mode shall be Thursday of each week (whether or not a Business Day); (ii) for the Monthly Mode shall be the first Business Day of each month; (iii) for the Semiannual Mode shall be the first Business Day of such Semiannual Mode which shall be the first Business Day of June or December and the first day following each six-month period thereafter; (iv) for the Annual Mode or a Multiyear Mode shall be the first Business Day of such Annual Mode or Multiyear Mode, which shall be the first Business Day of June or December, and thereafter the first Business Day

following the completion of then current Annual Mode or Multiyear Mode; and (v) for any Interest Mode, shall be the Interest Mode Adjustment Date.

“Rate Determination Date” means no later than 4:00 p.m., New York Time, on the Business Day immediately preceding a Rate Adjustment Date during a Weekly Mode or a Monthly Mode, and on a Business Day which is at least one Business Day immediately preceding a Rate Adjustment Date during a Semiannual Mode, Annual Mode or Multiyear Mode.

“Rate Period” means the period from a Rate Adjustment Date to, but not including, the next Rate Adjustment Date.

“Rating Agency” means Standard & Poor’s, if the Bonds are then rated by Standard & Poor’s, Moody’s, if the Bonds are then rated by Moody’s, and any other national rating service which has outstanding credit rating on the Bonds; provided if the Bonds are not rated, then references in the Indenture to the Rating Agency shall be of no force and effect.

“Record Date” means, with respect to Bonds in a Semiannual Mode, an Annual Mode or a Multiyear Mode, the fifteenth calendar day, whether or not a Business Day, of the month preceding such Interest Payment Date, and, with respect to Bonds in a Weekly Mode or Monthly Mode, the Business Day, immediately preceding such Interest Payment Date.

“Redemption Account” means the account by that name in the Debt Service Fund created pursuant to the Indenture.

“Remarketing Agent” means the remarketing agent at the time serving as such under the Remarketing Agreement and designated as the Remarketing Agent for purposes of the Indenture. The initial Remarketing Agent is M&I Marshall & Ilsley Bank.

“Remarketing Agreement” means the Remarketing Agreement dated as of December 1, 2008, between the Company and the Remarketing Agent, as amended, supplemented or restated from time to time, or, if such Remarketing Agreement shall be terminated, such other agreement, approved by the Credit Enhancer, which may from time to time be entered into by the Company with any Remarketing Agent with respect to the remarketing or placement of the Bonds.

“Remarketing Proceeds” means proceeds from the resale by the Remarketing Agent of Bonds delivered for purchase pursuant to the Indenture that have not been commingled with other funds which do not constitute Remarketing Proceeds, and proceeds from the investment thereof; provided, that Remarketing Proceeds cannot include any moneys provided by the Company, a guarantor of the Bonds, if any, or any Person which is an “insider” (within the meaning of Title 11 of the United States Code, as amended) of the Company or any guarantor of the Bonds.

“Replacement Bonds” means, if the use of the book-entry system of the Securities Depository pursuant to the Indenture is discontinued, one or more Bond certificates in principal amounts corresponding to the identifiable beneficial owners’ interests in the Bonds pursuant to the records of the Securities Depository.

“Representation Letter” means a letter from a proposed transferee of a Bond in the form attached to the Indenture.

“Revenue Fund” means the fund by that name created by the Indenture.

“Securities Depository” means The Depository Trust Company, New York, New York, or any successor Securities Depository appointed pursuant to the Indenture.

“Semiannual Mode” means an Interest Mode during which the interest rate on the Bonds is determined at six-month intervals as set forth in the Indenture, except that the first period will be from the Interest Mode Adjustment Date to, but not including, the next Rate Adjustment Date.

“Standard & Poor’s” means Standard & Poor’s, A Division of McGraw-Hill, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Standard & Poor’s shall be deemed to refer to any other nationally recognized securities rating agency designated by the Company, with the prior written approval of the Credit Enhancer, by written notice to the Trustee.

“State” means the State of Kansas.

“Supplemental Indenture” means any indenture supplemental or amendatory to the Indenture entered into by the Company and the Trustee pursuant to the Indenture.

“Tender Agent” means initially the Trustee, and any successor tender agent appointed pursuant to the Indenture. The Tender Agent shall act as Paying Agent as to Tendered Bonds.

“Tender Date” means (a) each date designated by a Bondowner for purchase of any Bonds in accordance with the provisions of the Indenture, and (b) each date on which Bonds are required to be tendered in accordance with the provisions of the Indenture, including any Mandatory Purchase Date, whether or not such Bonds are actually tendered (see “TENDER AND PURCHASE OF BONDS”).

“Tender Price” means 100% of the principal amount of any Tendered Bond plus interest accrued and unpaid thereon to, but not including, the Tender Date.

“Tendered Bonds” means (a) any Bonds tendered by a Bondowner for purchase pursuant to the Indenture, and (b) any Bonds required to be tendered for purchase pursuant to the Indenture, unless a proper waiver has been made by the Owner of such Bonds, in each case whether or not such Bonds are actually tendered.

“Termination Date” means (i) if the Credit Facility is not a letter of credit, the maturity or expiration date of the Credit Facility or, if such day is not a Business Day, the next preceding Business Day, or (ii) if the Credit Facility is a letter of credit, the last Interest Payment Date which is at least five days preceding the date on which the Credit Facility is to expire or terminate pursuant to its terms, in each case including any extension of such maturity or expiration date.

“Trust Estate” means the Trust Estate described in the granting clauses of the Indenture.

“Trustee” means Security Bank of Kansas City, Kansas City, Kansas, in its capacity as Trustee under the Indenture, and any co-trustee or successor or permitted assignee trustee appointed, qualified and then acting as such under the provisions of the Indenture.

“Unavailable Moneys Account” means the account by that name in the Revenue Fund created pursuant to the Indenture.

“Undelivered Bonds” means Bonds that are deemed to have been tendered to the Trustee or Tender Agent, as applicable, for purchase pursuant to the Indenture but which have not been surrendered to the Trustee or Tender Agent, as applicable.

“Underwriters” means M&I Marshall & Ilsley Bank and Stern Brothers & Co.

“Weekly Mode” means an Interest Mode during which the interest rate on the Bonds is determined in weekly intervals as set forth in the Indenture, except that the first period will be from the Interest Mode Adjustment Date to, but not including, the next Rate Adjustment Date.

“Written Request” with reference to the Company means a request in writing signed by the Authorized Company Representative.

Appendix C
FORM OF CREDIT FACILITY

[to be provided]

**Hickok Master Limited Partnership
c/o Hickok-Dible Companies
6201 College Blvd., Suite 210
Overland Park, Kansas 66211**

November 14, 2008

VIA REGULAR MAIL AND EMAIL

Security Bank of Kansas City
5800 Foxridge Drive, Suite 400
Mission, Kansas 66202-2388
Attention: Corporate Trust Department
mmclaughlin@securitybankkc.com
trhodes@securitybankkc.com

M&I Marshall & Ilsley Bank
11301 Nall Avenue
Leawood, Kansas 66211
Attention: Stephen Anderson
stephen.anderson@micorp.com
mark.slesar@micorp.com
inge.schneider@micorp.com
laura.mehring@micorp.com

Re: Consent to Leasehold Mortgage

Ladies and Gentlemen:

The City of Topeka, Kansas (the “City”) leased the Fleming Court Apartment Project (the “Project”) to Hickok Master Limited Partnership (“Lessee”) pursuant to that certain Lease Agreement, dated as of December 1, 2000, by and between the City and Lessee (as amended, supplemented, restated or otherwise modified, the “Lease”). Lessee intends to issue bonds and to use the proceeds thereof to, among other things, refinance certain existing leasehold mortgages on the Project, to finance improvements and maintenance of the Project, and for other corporate purposes of Lessee. The bonds will be supported by a letter of credit issued by M&I Marshall & Ilsley Bank (“M&I”), and Lessee’s obligations to M&I will be secured by a leasehold mortgage on the Project (the “Leasehold Mortgage”).

Section 10.1 of the Lease provides that Lessee may mortgage the Lease and its interest therein with the consent of the City, which the City may not “unreasonably, arbitrarily or unnecessarily” withhold or delay as provided in Section 15.2 of the Lease. In that certain Trust Indenture, dated as of December 1, 2000, by and between the City and Security Bank of Kansas City, as trustee (the “Trustee”) (as amended, supplemented, restated or otherwise

Security Bank of Kansas City
November 14, 2008
Page 2 of 3

modified, the "Trust Indenture"), the City granted to the Trustee its interest in the Lease.

Pursuant to Section 713 of the Trust Indenture, the City agreed that the Trustee may enforce all the rights of the City under and pursuant to the Lease. In addition, Section 712 of the Trust Indenture requires the Trustee to perform all obligations and duties of the City under the Lease, with the consent of the Credit Enhancer, M&I. Lessee hereby requests that the Trustee, on behalf of the City and pursuant to Section 713 of the Trust Indenture, and M&I, as Credit Enhancer, consent to the Leasehold Mortgage.

Please acknowledge your consent to the Leasehold Mortgage by signing the enclosed counterpart of this letter and returning it to the following as soon as possible:

Husch Blackwell Sanders LLP
1200 Main Street, Suite 2300
Kansas City, Missouri 64105
Attn: Christine Gould Hamm
Facsimile: (816) 421-0596
Email: christine.hamm@huschblackwell.com

Thank you for your cooperation in this matter. Please feel free to contact Christine Gould Hamm at (816) 283-4626 if you have any questions.

Sincerely,

Hickok Master Limited Partnership

By: 

Name: Timothy W. Hickok

Title: General Partner

M&I Marshall & Ilsley Bank, the Credit Enhancer as defined in the Trust Indenture referenced above, hereby consents to the Leasehold Mortgage:

M&I Marshall & Ilsley Bank

By: 

Name: STEPHEN B. ANDERSON

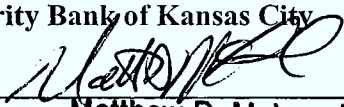
Title: AVP

Date: November 17, 2008

Security Bank of Kansas City
November 14, 2008
Page 3 of 3

Security Bank of Kansas City, as Trustee under the Trust Indenture referenced above, hereby consents to the Leasehold Mortgage:

Security Bank of Kansas City

By: 

Name: Matthew D. McLaughlin

Title: Vice President

Date: 11/17/08

cc: Polsinelli Shalton Flanigan Suelthaus PC
6201 College Blvd., Suite 500
Overland Park, Kansas 66211
Attention: John P. Healy
jhealy@polsinelli.com

LEASE AGREEMENT

BY AND BETWEEN

CITY OF TOPEKA, KANSAS

AND

HICKOK MASTER LIMITED PARTNERSHIP

RELATING TO

\$3,880,000

MULTIFAMILY HOUSING REFUNDING REVENUE BONDS

SERIES 2000

(FLEMING COURT APARTMENTS PROJECT)

DATED AS OF DECEMBER 1, 2000

The interest of the City of Topeka, Kansas (the "City") in this Lease Agreement has been pledged and assigned to Security Bank of Kansas City, Mission, Kansas, as Trustee under the Trust Indenture dated as of December 1, 2000, by and between the City and the Trustee.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of December 1, 2000 (the "Lease"), by and between the City of Topeka, Kansas (the "City"), a municipal corporation duly organized and existing under the laws of the State of Kansas, as Lessor, and Hickok Master Limited Partnership, a Kansas limited partnership duly authorized and qualified to do business in the State of Kansas (the "Lessee"), as Lessee;

WITNESSETH:

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Kansas with full and lawful power and authority to enter into this Lease; and

WHEREAS, the City is authorized by K.S.A. 10-116a and K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct and equip certain facilities (as defined in the Act) for the stated statutory purposes, for any person, firm or corporation for said projects and to issue revenue bonds for the purpose of paying the cost of such facilities; and

WHEREAS, said Act further authorizes the City to enter into leases and lease-purchase agreements with any person, firm or corporation with respect to said projects, and further authorizes the City to issue revenue bonds for the purposes aforesaid, and to secure the payment of such bonds as provided in the Act; and

WHEREAS, pursuant to such authorization, the City has heretofore entered into a Trust Indenture dated as of April 1, 1991 (the "Refunded Bonds Indenture"), by and between the City and First Tennessee Bank National Association (the "Refunded Bonds Trustee") pursuant to which the City issued its Multifamily Housing Revenue Refunding Bonds, Series 1991A (Fleming Court Apartments Project) (the "Refunded Bonds"), in the principal amount of \$4,105,000, for the purpose of refunding the City's Multifamily Housing Revenue Bonds, Series 1985 (Cottonwood Associates, Limited Partnership Project) (the "Series 1985 Bonds"), previously issued for the purpose of acquiring, purchasing, constructing and installing a multifamily housing project, including real estate, buildings, improvements and equipment (the "Project" as more fully described on Exhibit A attached hereto) and leased the Project to the Lessee pursuant to a Lease Agreement dated as of April 1, 1991 (the "1991 Lease"), by and between the City and the Lessee; and

WHEREAS, the City also issued its Taxable Multifamily Housing Revenue Bonds, Series 1991B (Fleming Court Apartments Project) (the "Series 1991B Bonds"), for the purpose of paying certain insurance premiums, funding a debt service reserve fund and paying costs of issuance of the Refunded Bonds and the Series 1991B Bonds; and

WHEREAS, pursuant to the Act, the governing body of the City adopted a resolution on November 13, 2000, declaring the City's intent to issue multifamily housing refunding revenue bonds in an aggregate amount not to exceed \$3,880,000; and

WHEREAS, at the Lessee's request, pursuant to Ordinance No. 17607 duly passed by its governing body on December 5, 2000, the City has agreed to issue \$3,880,000 principal amount of its Multifamily Housing Refunding Revenue Bonds, Series 2000 (Fleming Court Apartments Project) (the "Bonds"), for the purpose of providing funds to refund the Refunded Bonds, and to enter into a Lease Agreement dated as of December 1, 2000 (the "Lease"), by and between the City and the Lessee, which, among other things, provides for a rental sufficient to pay and redeem, and provide for the payment of the principal of, premium, if any, and interest on the Bonds, when due, and the fees and expenses of the Trustee and any paying agent for the Bonds; and

WHEREAS, the Lessee will pay and retire the Series 1991B Bonds simultaneously with the redemption of the Refunded Bonds; and

WHEREAS, pursuant to such Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture"), with Security Bank of Kansas City, Mission, Kansas, as trustee (the "Trustee"), for the purpose of issuing and securing the Bonds, as therein provided, and authorizing the City to enter into this Lease Agreement with the Lessee in consideration of rental payments by the Lessee which will be sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds; and

WHEREAS, to secure the payment of the principal of and interest on the Bonds and the purchase price of Bonds tendered by the Owners thereof as provided in the Indenture, the Lessee has caused LaSalle Bank National Association, a national banking association organized under the laws of the United States of America (the "LOC Bank," and including the issuer of any Alternative Credit Facility, the "Credit Enhancer"), to deliver an irrevocable direct-pay letter of credit (the "Letter of Credit," and including any Alternate Credit Facility, the "Credit Facility") to the Trustee in order to secure the timely payment of the principal of and interest on the Bonds; and

WHEREAS, Gold Bank, a state banking corporation organized under the laws of the State of Kansas (the "Bank") is entering into a Reimbursement Agreement dated as of December 1, 2000 (the "LaSalle Reimbursement Agreement") pursuant to which the Bank agrees to reimburse the LOC Bank for draws under the Letter of Credit; and

WHEREAS, the Lessee will enter into a Reimbursement Agreement dated as of December 1, 2000 with the Bank (the "Reimbursement Agreement"), pursuant to which the Lessee agrees to pay certain amounts to the Bank, including amounts required to reimburse the Bank for all amounts that the Bank pays to the LOC Bank pursuant to the LaSalle Reimbursement Agreement; and

WHEREAS, pursuant to the foregoing, the City desires to lease the Project to the Lessee and the Lessee desires to lease the Project from the City, for the rental payments and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Lessee do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS

Section 1.1. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Lease, the words and terms as used in this Lease shall have the meanings set forth in Exhibit B attached hereto.

Section 1.2. Rules of Interpretation.

- (a) 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, partnerships, joint stock companies, joint ventures, trusts, unincorporated organizations, limited liability companies and corporations, including governmental entities, as well as natural persons.
- (b) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.
- (c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.
- (d) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The City is a municipal corporation duly organized and existing under the laws of the State of Kansas. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.
- (b) The issuance of the Bonds to refund the Refunded Bonds and the leasing of the Project by the City to the Lessee will further the public purposes of the Act.
- (c) The City has title to the Project. The City proposes to lease the Project to the Lessee and sell the Project to the Lessee if the Lessee exercises its option to purchase the Project, all for the purpose of furthering the public purposes of the Act.
- (d) To refund the Refunded Bonds, the City proposes to issue the Bonds in the principal amount of \$3,880,000. The Bonds will bear interest and be scheduled to mature as set forth in Article II of the Indenture and will be subject to purchase from the Owners thereof in accordance with the provisions of Article III of the Indenture and redemption prior to maturity in accordance with the provisions of Article IV of the Indenture.
- (e) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom including all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, other than Unassigned City's Rights, and certain other funds will be pledged and assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.
- (f) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof.
- (g) No member of the governing body of the City or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Lessee or in the transactions contemplated hereby.

Section 2.2. Representations by the Lessee. The Lessee makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The Lessee is a Kansas limited partnership, duly organized and existing under the laws of the State of Kansas and authorized and qualified to do business in the State of Kansas and is under no legal disability.
- (b) The Lessee has lawful power and authority to enter into this Lease and the Lessee Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery and performance hereof and thereof.
- (c) The execution and delivery of this Lease and the Lessee Documents and the performance of or compliance with the terms and conditions of this Lease and the Lessee Documents by the Lessee will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or other agreement or instrument to which the Lessee is a party or by which it or any of its property is bound, or the Lessee's Limited Partnership Agreement or any order, rule or regulation applicable to the Lessee or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee under the terms of any instrument or agreement to which the Lessee is a party.
- (d) The issuance of the Bonds to refund the Refunded Bonds and the leasing of the Project by the City to the Lessee will further the public purposes of the Act.
- (e) The proceeds from the sale of the Bonds will be used, together with other funds of the Lessee, only to provide funds to currently refund and pay the Refunded Bonds to the extent permitted by the Act and the Code, and will not be used to provide working capital for the Lessee or any subsidiary or affiliate thereof.
- (f) The Lessee will fully and faithfully perform all the duties and obligations which the City has covenanted and agreed in the Indenture to cause the Lessee to perform and any duties and obligations which the Lessee is required in the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the City which by its nature cannot be delegated or assigned.

- (g) The Project complies and will comply during the term of this Lease with all presently applicable building and zoning, health, environmental and safety regulations and laws and all other applicable laws, rules and regulations.
- (h) There is not now pending or, to the knowledge of the Lessee, threatened, any suit, action or proceeding against or affecting the Lessee by or before any court, arbitrator, administrator, administrative agency or other governmental authority which, if decided adversely to the Lessee, would materially affect the validity of any of the transactions contemplated by this Lease or the Indenture, or impair the ability of the Lessee to perform its obligations under this Lease or the Indenture, or as contemplated hereby or thereby, nor is there any basis therefor.
- (i) The Project is located wholly within the corporate limits of the City.
- (j) The Lessee is knowledgeable and experienced in the operation of apartment facilities of the magnitude and nature the Lessee has undertaken and will continue to undertake in connection with the Project.
- (k) The Lessee has made and will make during the terms of this Lease all filings which the Lessee is obligated to make with, and has obtained and will obtain during the term of this Lease all approvals and consents which it is obligated to obtain from, all federal, state and local regulatory agencies having jurisdiction to the extent, if any, required by applicable laws and regulations to be made or to be obtained in connection with the Project, the execution and delivery by the Lessee of the Lessee Documents, the transaction contemplated thereunder, and the performance by the Lessee of the Lessee's obligations thereunder.
- (l) The Lessee will execute and deliver such additional instruments and perform such additional acts as may be necessary, in the opinion of the City, to carry out the intent hereof and of the Lessee Documents or to perfect or give further assurances of any of the rights granted or provided for herein or in the Lessee Documents.
- (m) The Lessee will advise the City, the Credit Enhancer, the Bank and the Trustee promptly in writing of the occurrence of any Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

- (n) Any certificate signed by an Authorized Lessee Representative and delivered pursuant to this Lease or the Indenture shall be deemed a representation and warranty of the Lessee as to the statements made therein.
- (o) Concurrently with the execution of this Lease, the Lessee will cause to be delivered to the Trustee, on behalf of the City, the Credit Facility and the Credit Facility shall be in full force and effect and shall secure the performance of the Lessee's obligations under this Lease with respect to the payment of the principal of and interest on the Bonds.

Section 2.3. General Tax Representations, Warranties and Covenants of Lessee. The Lessee further represents, warrants and covenants as follows:

- (a) No proceeds of the Refunded Bonds or the Series 1985 Bonds were used directly or indirectly, for the acquisition of land (or an interest therein) to be used for farming purposes and less than twenty-five percent (25%) of the proceeds of the Refunded Bonds were used (directly or indirectly) for the acquisition of land (or an interest therein) within the meaning of Section 103(b)(16) of the 1954 Code.
- (b) Ninety percent (90%) or more of the expenditures for costs of the Project made from proceeds of the Refunded Bonds or the Series 1985 Bonds are, for federal income tax purposes, chargeable to the capital account of the Project or would be so chargeable either with a proper election by the Lessee under the Code or but for a proper election to deduct any such costs.
- (c) The costs of the acquisition, construction and installation of the Project were incurred subsequent the date upon which the City adopted a resolution taking "official action" within the meaning of the 1954 Code for the purpose of financing the Project.
- (d) The Lessee has operated, prior to the date of execution hereof, and presently intends to use or operate, the Project in a manner consistent with the Land Use Restriction Agreement and presently intends to use or operate, and will use and operate, the Project in accordance with the terms of the Land Use Restriction Agreement until the later of the date on which the Qualified Project Period terminates or the date on which the Bonds have been fully paid and knows of no reason why the Project will not be so operated. If in the future there is a cessation of that operation, the Lessee will use the Lessee's best efforts to resume that operation or accomplish an alternate use by the Lessee or others which will be consistent with the Act and the tax-exempt status of the Bonds; provided that there shall have been delivered to the City, the Trustee, the Lessee and the Credit Enhancer an Opinion of Bond Counsel stating that such alternate use will not adversely affect the

exclusion of interest on the Bonds from gross income for federal income tax purposes. The Lessee is not now in default under the Land Use Restriction Agreement and specifically agrees to continue to meet its requirements. From and after the issuance of the Refunded Bonds, prior to the date of execution hereof, the Lessee has operated the Project in accordance with the requirements of the 1954 Code for tax-exempt obligations.

- (e) The Lessee will assist the City in filing all appropriate returns, reports and attachments to income tax returns as now or hereafter required by the provisions of the Code, including without limitation the Information Return for Private Activity Bond Issues required under the Code.
- (f) The weighted average maturity of the Bonds, calculated in accordance with the requirements of Section 147(b) of the Code, is less than 120% of the remaining average reasonably expected economic life of the Project, calculated in accordance with the requirements of Section 147(b) of the Code.
- (g) No proceeds of the Bonds shall be invested in federally insured deposits or accounts except as part of a bona fide debt service fund or a reasonably required reserve fund.
- (h) The Lessee covenants and agrees that the Lessee will not make or permit any use, and will not direct the Trustee to make any investment or use of the proceeds of any of the Bonds, which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Tax Regulations thereunder as the same may be applicable to the Bonds at the time of such action, investment or use and further covenants and agrees that the Lessee shall take and cause the City and Trustee to take all actions required to comply with the provisions of Section 148 of the Code.

Section 2.4. Residential Rental Project. The Lessee hereby declares the Lessee's understanding and intent that the Project is to be owned, managed and operated as a project for "residential rental property" as such phrase is utilized in Section 103(b)(4)(A) of the 1954 Code. To that end, the Lessee hereby represents, covenants and agrees as follows:

- (a) The Project has been acquired, constructed and installed for the purpose of providing multifamily residential rental property, and the Lessee shall own, manage and operate the Project as a multifamily residential rental project comprised of residential dwelling units and facilities functionally related and subordinate thereto, all in accordance with Section 103(b)(4)(A) of the 1954 Code and Treasury Regulations §1.103-8(b), as the same may be amended from time to time;

- (b) All of the dwelling units are similarly constructed and each dwelling unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family;
- (c) (i) None of the dwelling units in the Project shall at any time be utilized on a transient basis; (ii) none of the dwelling units in the Project shall ever be leased or rented for an initial period of less than thirty (30) days; and (iii) neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer court or park;
- (d) No part of the Project will at any time be owned or used by a cooperative housing corporation;
- (e) The Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof and each containing five or more units, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more tracts separated only by a road, street, stream or on a similar property, and (iii) refinanced by the proceeds of the Bonds or otherwise pursuant to a common plan of financing, and which will consist entirely of:
 - (i) Units which are similar in quality and type of construction and amenities; and
 - (ii) Property functionally related and subordinate in purpose and size to property described in (i) above, e.g., tenant parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Low or Moderate Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment or units for residential managers or maintenance personnel;
- (f) The Project will not include a unit in a building where all units in such building are not also included in the Project;
- (g) During the longer of the Lease Term or the Qualified Project Period the Lessee will not sell any individual dwelling unit or units unless such sale is a part of the sale of the Project in its entirety; and

- (h) No dwelling unit in the Project shall be occupied by the Lessee at any time unless the Lessee resides in a dwelling unit in a building or structure which contains at least five (5) dwelling units and unless the resident of such dwelling unit is a resident manager or other necessary employee (e.g., maintenance and security personnel).

Section 2.5. Low or Moderate Income Tenants. In order to satisfy the requirements of Section 103(b)(4)(A) of the 1954 Code, the Lessee hereby represents, covenants and agrees that during the Qualified Project Period:

- (a) (i) The dwelling units in the Project shall be leased and rented or made available for rental on a continuous basis to members of the general public and (ii) the Lessee shall not give preference in renting dwelling units in the Project to any particular class or group of persons, other than Low or Moderate Income Tenants as provided herein;
- (b) At least twenty percent (20%) of the dwelling units will be occupied by Low or Moderate Income Tenants;
- (c) The Lessee will obtain and maintain on file a sworn, notarized Income Certification from each Low or Moderate Income Tenant (as required under the Land Use Restriction Agreement), dated immediately prior to the initial occupancy of such Low or Moderate Income Tenant in the Project, in the form and containing such information as may be required by Section 103(b)(12)(C) of the 1954 Code, as the same may be from time to time amended, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 103(b)(4)(A) of the 1954 Code;
- (d) The Lessee will permit any duly authorized representative of the City, the Trustee, the Credit Enhancer, the Bank, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Lessee pertaining to the incomes of Low or Moderate Income Tenants residing in the Project upon reasonable notice and at reasonable times; and
- (e) The Lessee will immediately notify the Trustee, the Credit Enhancer and the Bank if at any time the dwelling units in the Project are not occupied or available for occupancy as provided above, and the Lessee will prepare and submit to the Trustee, on the date of delivery of the Bonds to the initial purchasers thereof and not later than the tenth (10th) day of the month following each February 1 and August 1 thereafter, a Certificate of Continuing Program Compliance (the form of which is attached as Exhibit C

to the Land Use Restriction Agreement) executed by the Lessee stating the number of dwelling units of the Project which, as of the last date of the immediately preceding six (6) month period, were occupied by Low or Moderate Income Tenants, to which the Lessee will attach an Income Certification for each Low or Moderate Income Tenant whose initial occupancy commenced during the period from the date of the prior Certificate of Continuing Program Compliance to the date of the current Certificate of Continuing Program Compliance.

Section 2.6. Tax Exemption; Land Use Restriction Agreement. The Lessee hereby covenants, represents and agrees as follows:

- (a) not to take or omit to take any action with respect to this Lease or the Project that would adversely affect the exclusion from gross income for federal income purposes of the interest on the Bonds;
- (b) to take such action or actions, including amendment of the Land Use Restriction Agreement, as may be necessary in the opinion of Bond Counsel, to preserve or perfect the exclusion of interest on the Bonds from gross income for federal income tax purposes;
- (c) to file of record such documents and take such other steps as are necessary in order to insure that the requirements and restrictions of the Land Use Restriction Agreement will be binding upon all owners of the Project, including, but not limited to, the execution and recordation of the Land Use Restriction Agreement in the real property records of the Register of Deeds of Shawnee County, Kansas; and
- (d) to include the requirements and restrictions contained in the Land Use Restriction Agreement in any deed or other documents (other than the Mortgage) transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by such restrictions, and to obtain the agreement from any transferee so to abide.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The Lessee has previously transferred title to the Project to the City. The City hereby rents, leases and lets the Project and the Project Site as described in Exhibit A hereto, to the Lessee, and the Lessee hereby rents, leases and hires the Project and the Project Site from the City, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein

contained. Reference is made to the provisions of Section 10.4 hereof whereby the Credit Enhancer is granted the right to succeed to the interests of the Lessee hereunder as specified therein.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2026, unless earlier terminated pursuant to the provisions hereof.

Section 3.3. Possession and Use of the Project.

- (a) The City covenants and agrees that as long as the Lessee shall not be in default under this Lease, the Lessee shall have sole and exclusive possession of the Project and the Project Site (subject to the City's, the Credit Enhancer's, the Bank's and the Trustee's right of access pursuant to Section 9.3 hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than pursuant to Article XII of this Lease, to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Project and the Project Site during the Lease Term and will, at the request and expense of the Lessee, defend the Lessee's enjoyment and possession thereof against all parties.
- (b) Subject to the provisions of this Section, the Lessee shall have the right to use the Project and the Project Site for any lawful purpose allowed by law and contemplated by the Act. The Lessee shall comply with all statutes, laws, resolutions, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project and the Project Site or to any adjoining public ways, as to the manner of use or the condition of the Project and the Project Site or of adjoining public ways. The Lessee shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of Article VI hereof. The Lessee shall pay all costs, expenses, assessments, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Lessee to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Lessee shall have the right, at its own cost and expense, to contest or review, by legal or other appropriate procedures, the validity or legality of any such governmental statute, law, resolution, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Lessee may refrain from complying therewith.

ARTICLE IV

ISSUANCE OF THE BONDS; DISPOSITION OF PROCEEDS OF THE BONDS; CREDIT FACILITY

Section 4.1. Issuance of Bonds.

- (a) In order to provide funds for the payment of the cost of refunding the Refunded Bonds, the City agrees that it will issue, sell and cause to be delivered to the purchasers thereof the Bonds. The proceeds of the sale of the Bonds shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit proceeds of the sale of the Bonds as provided in the Indenture, to be used and applied to repay the short-term loan from the Bank the proceeds of which were used to currently refund the Refunded Bonds as hereinafter provided in this Article and in the Indenture.
- (b) The City and the Lessee expressly reserve the right to enter into, to the extent permitted by law, an agreement or agreements other than this Lease with respect to the issuance by the City under an indenture or indentures other than the Indenture of obligations to provide funds to refund all or any principal amount of the Bonds.

Section 4.2. Disbursements; Investment of Moneys in Funds. Moneys from the Lessee in the Cost of Issuance Fund shall be disbursed by the Trustee upon the delivery by the Lessee of an executed Requisition (in substantially the form of Exhibit C attached hereto) approved by the City. Any moneys held as a part of the Funds under the Indenture shall, at the written direction of the Lessee (with the consent of the Credit Enhancer), be invested or reinvested by the Trustee, to the extent permitted by law, in Investment Securities (as defined in the Indenture) in accordance with the provisions of Section 602 of the Indenture. The City and the Lessee each hereby covenants that it shall cause that investment and reinvestment and the use of the proceeds of the Bonds to be restricted in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Bonds, so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code.

Section 4.3. Credit Facility. Concurrently with the issuance of the Bonds, the Lessee shall cause the Credit Facility to be delivered to the Trustee to induce the purchase of the Bonds by the original purchasers thereof. The Lessee shall cause the Credit Facility or an Alternate Credit Facility to be continuously maintained until all of the Bonds have been fully paid or their payment provided for in accordance with Article XII of the Indenture, except as otherwise provided in the Indenture when the Bonds are owned by an Accredited Investor and/or Financial Institution.

Any provisions herein requiring notice to or from the Credit Enhancer and/or the Bank or the consent of the Credit Enhancer prior to any action by the Trustee or the City shall have no force or effect (a) following the later of (i) the Termination Date and (ii) the repayment of all amounts owed to the Credit Enhancer and/or the Bank pursuant to the Collateral Documents, (b) during any period an event of default under the Credit Facility shall have occurred and is continuing, except with respect to all rights accruing to the Credit Enhancer and/or the Bank with respect to unreimbursed draws on the Credit Facility, or (c) during any period of time when the Bonds are owned by an Institutional Investor(s) and/or Accredited Investor(s) and not secured by a Credit Facility.

Section 4.4. Alternate Credit Facility. The Lessee may (without penalty or premium) provide and the Trustee shall accept any Alternate Credit Facility, provided that any Alternate Credit Facility shall meet the requirements of Section 707 of the Indenture and an opinion of counsel acceptable to the Trustee has been delivered to the Trustee to substantially the same effect as the opinion of the counsel to the Credit Enhancer delivered in connection with the issuance of the initial Credit Facility.

ARTICLE V

PAYMENT PROVISIONS

Section 5.1. Rental Payments.

- (a) The Lessee covenants and agrees during the Lease Term to make Rental Payments to the Trustee at its principal corporate trust office, for the account of the City, for deposit in the Revenue Fund, in federal or other immediately available funds, during normal business hours on or before 10:00 o'clock A.M. Trustee's local time, on each Rental Payment Date, the amount of such payment being as follows:
 - (i) the principal amount of the Bonds due at stated maturity pursuant to the Indenture on the corresponding Principal Payment Date;
 - (ii) the amount of the principal of the Bonds due and payable on each Rental Payment Date (other than the amounts specified in clause (i) above) upon acceleration, redemption prior to maturity or otherwise;
 - (iii) the amount of interest on the Bonds due and payable on such Rental Payment Date;
 - (iv) the amount of redemption premium, if any, on the Bonds due and payable on such Rental Payment Date; and

- (v) the purchase price of any Bonds required to be purchased pursuant to Article III of the Indenture.
- (b) The amounts received by the Trustee under the Credit Facility shall be credited against the Rental Payment due on the applicable Rental Payment Date.
- (c) Except for such interest of the Lessee as may hereafter arise pursuant to Section 511 of the Indenture, the Lessee and the City each acknowledge that neither the Lessee nor the City has any interest in the Revenue Fund or the Debt Service Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Bondowners and the Credit Enhancer.

Section 5.2. Additional Payments. The Lessee shall pay on demand to the City or the Trustee, as the case may be, as Additional Payments the following amounts:

- (a) All fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Trustee incurred under the Indenture, as and when the same become due.
- (b) All Costs of Issuance and fees, charges and expenses, including agent and counsel fees, incurred in connection with the issuance of the Bonds, as and when the same become due.
- (c) All costs incident to the payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable, including all costs and expenses in connection with the call, redemption and payment of Bonds, including attorneys' fees and costs.
- (d) An amount sufficient to reimburse the City for all expenses reasonably incurred by the City hereunder and in connection with the performance of its obligations under this Lease, the Land Use Restriction Agreement or the Indenture.
- (e) All expenses incurred in connection with the enforcement of any rights under this Lease, the Land Use Restriction Agreement or the Indenture by the City, the Trustee or the Bondowners.
- (f) To the Trustee, all costs related to the calculation of Rebutable Arbitrage and amounts rebatable to the United States of America (including the charges of the individual or firm retained to perform such calculations) and, to the extent moneys in the Rebate Fund are insufficient, all amounts required to be rebated to the United States of America.

- (g) All other payments of whatever nature which the Lessee has agreed to pay or assume under the provisions of this Lease.

Any past due Additional Payments shall continue as an obligation of the Lessee until they are paid and shall bear interest (except as may be otherwise provided in the Collateral Documents with respect to obligations owed to the Credit Enhancer and/or the Bank) at the Base Rate plus two percent (2%) during the period such Additional Payments remain unpaid.

Section 5.3. Obligations of the Lessee Absolute and Unconditional.

- (a) The obligations of the Lessee under this Lease to make Rental Payments and Additional Payments on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the City's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Lessee's use thereof, the eviction or constructive eviction of the Lessee, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City, and regardless of the invalidity of any portion of this Lease, and the Lessee hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the Lessee therefrom.
- (b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Lessee or the Credit Enhancer of any rights or claims the Lessee or the Credit Enhancer may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Lessee shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Rental Payments and Additional Payments) for the benefit

of the Bondowners. The Lessee or the Credit Enhancer may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third persons which the Lessee or the Credit Enhancer deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Lessee or the Credit Enhancer and to take all action necessary to effect the substitution of the Lessee or the Credit Enhancer for the City in any such action or proceeding if the Lessee shall so request.

- (c) Notwithstanding anything herein to the contrary, it is recognized that all obligations under this Lease are non-recourse as to the Lessee and the general partners and limited partners of the Lessee (except with respect to Sections 9.6 and 13.1 hereof and the Unassigned City's Rights, which obligations are recourse as to the Lessee), and that no general or limited partner shall have personal liability for the performance of any obligation under this Lease and that the City shall look solely to the Project for any amounts due hereunder; provided, however, that any obligations arising out of the Lessee's fraud, material misrepresentation or intentional criminal or tortious misconduct shall be the general and personal obligations of the Lessee and its general partner(s).

Nothing contained in this Section 5.3 shall relieve, nor be construed to relieve, the Lessee from its obligations hereunder.

Section 5.4. Redemption of Bonds. If the Lessee is not in default in the payment of Rental Payments, the City and the Trustee, at the written direction of the Lessee, at any time that the aggregate moneys in the Debt Service Fund are sufficient for such purposes, shall (a) if the same are then redeemable under the provisions of Article IV of the Indenture, take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect the redemption of all or such part of the then Outstanding Bonds as may be specified by the Lessee, on such redemption date as may be specified by the Lessee, (b) cause such moneys in the Debt Service Fund or such part thereof as the Lessee shall direct, to be applied by the Trustee as is reasonably possible for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of delivery for cancellation, or (c) a combination of (a) and (b) as provided in such direction.

ARTICLE VI

MAINTENANCE, TAXES AND INSURANCE

Section 6.1. Maintenance, Repairs and Utilities.

- (a) The Lessee shall throughout the Lease Term at its own expense (i) keep and maintain the Project and all parts thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and (ii) keep the Project and all parts thereof in safe condition and free from contamination by hazardous substances, filth, nuisance or conditions unreasonably increasing the danger of fire.
- (b) All utilities and utility services used by the Lessee in, on or about the Project shall be paid for by the Lessee and shall be contracted for by the Lessee in the Lessee's own name, other than utility services contracted for by the tenants of the Project in said tenants' names and the Lessee shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

- (a) The Lessee shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Lessee therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Lessee, or the income therefrom or Rental Payments and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Lessee shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

- (b) The Lessee shall have the right, in its own name or in the City's name, to contest the validity or amount of any tax, assessment or other governmental charge which the Lessee is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least ten (10) days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided that (i) the Lessee, before instituting any such contest, gives the City, the Credit Enhancer and the Bank written notice of its intention so to do, (ii) the Lessee diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) the Lessee promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate with the Lessee in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Lessee shall hold the City, the Credit Enhancer and the Bank whole and harmless from any costs and expenses the City, the Credit Enhancer or the Bank may incur related to any of the above.

Section 6.3. Receipted Statements. Within thirty (30) days after the last day for payment, without penalty or interest, of any tax which the Lessee is required to bear, pay and discharge pursuant to the terms hereof, the Lessee shall deliver to the Trustee, the Credit Enhancer and the Bank a photostatic copy of the statement issued therefor duly receipted to show the payment thereof.

Section 6.4. Title Insurance. The Lessee will purchase, on behalf of the City and the Trustee, from a company duly qualified to issue such insurance in the State of Kansas, an American Land Title Association leasehold policy of title insurance, such policy to be at least in the amount of \$3,880,000. A copy of said policy or a commitment therefor will be delivered to the Trustee by the Lessee on or before the date of issuance of the Bonds. The Net Proceeds of such policy shall be applied in accordance with the provisions of Article VIII of this Lease.

Section 6.5. Casualty Insurance.

- (a) The Lessee shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Kansas in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The Full Insurable Value of the Project shall be determined from time to time at the request of the City, the Credit Enhancer, the Bank, the Lessee or the Trustee (but not more frequently than once in every three years) by an architect, contractor,

appraiser, appraisal company or one of the insurers, to be selected, subject to the Trustee's approval, and paid by the Lessee. The insurance required pursuant to this Section shall be maintained at the Lessee's sole cost and expense, shall be maintained with generally recognized responsible insurance company or companies authorized to do business in the State of Kansas as may be selected by the Lessee, and shall conform to all requirements of the Credit Enhancer. Certificates of insurance required under this Section, each bearing notations evidencing payment of the premiums or other evidence of such payment, shall be delivered by the Lessee to the Trustee, the Credit Enhancer and the Bank. All such policies of insurance pursuant to this Section, and all renewals thereof, shall be payable to the Credit Enhancer for as long as the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, and thereafter shall be payable to the Trustee, shall name the City, the Credit Enhancer, the Lessee and the Trustee as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be cancelled by the insurer thereof without at least thirty (30) days' advance written notice to the City, the Credit Enhancer, the Lessee and the Trustee.

- (b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid to the Trustee for deposit into the Casualty/Condemnation Fund and shall be applied as provided in Article VIII of this Lease.

Section 6.6. Public Liability Insurance.

- (a) The Lessee shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and public liability insurance (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the City, the Credit Enhancer, the Lessee and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City, the Credit Enhancer and the Trustee, in the amounts and limits required under the Mortgage for as long as the Credit Facility remains in force and effect, or any amounts remain unreimbursed with respect thereto, and thereafter in an amount not less than \$1,000,000 for bodily injury (including death) in any one occurrence (with excess coverage in an amount not less than \$1,000,000 and a deductible of not more than \$5,000), and not less than \$500,000 for property damage in any one occurrence (subject to reasonable loss deductible clauses not to exceed \$5,000). Said insurance shall conform to the requirements of the Credit Enhancer while the Credit Facility remains in force and effect, or any amounts remain unreimbursed with respect thereto. The policies of said

insurance shall contain a provision that such insurance may not be cancelled by the insurer thereof without at least thirty (30) days' advance written notice to the City, the Credit Enhancer, the Bank, the Lessee and the Trustee. Certificates of insurance thereof shall be furnished to the City, the Credit Enhancer, the Bank and the Trustee.

- (b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 6.7. Blanket Insurance Policies.

- (a) The Lessee may satisfy any of the insurance requirements set forth in this Article, except title insurance, by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Said insurance shall conform to the requirements of the Credit Enhancer and the Bank.
- (b) Upon the written request of the Lessee, and without the consent of the Bondowners, the City may permit modifications to the insurance coverage, including permission for the Lessee to be self-insured upon meeting the requirements set forth above, in whole or in part, for any such coverage, taking into account the cost and availability of insurance and the effect of the terms and rates of such insurance upon the Lessee's costs and charges for its services. The Trustee may rely upon a report of an Insurance Consultant chosen by the Lessee, subject to the approval of the City. The permission of the City to make such modifications shall not be unreasonably withheld. Notwithstanding the provisions of this Section 6.7(b), as long as the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, any modification of insurance coverage requested by Lessee shall not be made without first having obtained the consent in writing of the Credit Enhancer; and in addition the Credit Enhancer shall have the right to approve of Lessee's choice of an insurance consultant provided for in this Section. Any consent or approval of the Credit Enhancer provided for herein may be given or withheld in the absolute discretion of the Credit Enhancer.

Section 6.8 Obligations under Collateral Documents. The provisions of this Article shall be in addition to, and not in lieu of, any requirements contained in the Collateral Documents relating to the subject matter of this Article.

Section 6.9. Replacement Reserve Fund and Tax and Insurance Fund. The Lessee shall set aside, monthly, by depositing with the Trustee, the Credit Enhancer or the Bank as provided in this section, moneys for capital improvements, replacements and repairs and moneys for taxes and insurance with respect to the Project. The Replacement Reserve Fund and the Tax and Insurance Fund have been created in the custody of the Trustee pursuant to the Indenture. In addition, the Reimbursement Agreement provides for the creation of a Replacement Reserve Account and of an Escrow Account for taxes and insurance in the custody of the Bank. So long as the Bonds are insured by the Letter of Credit issued by the LOC Bank, the Lessee shall be required to make the deposits with the Bank required by the Reimbursement Agreement into the Replacement Reserve Account and the Escrow Account for taxes and insurance as provided in the Reimbursement Agreement. If an Alternate Credit Facility is delivered and the provider of the Alternate Credit Facility requires that deposits by the Lessee into a comparable Replacement Reserve Account and/or Escrow Account for taxes and insurance held such Credit Enhancer be made, then the Lessee shall deposit such moneys with such Credit Enhancer. In the event that the Bonds are not secured by a Credit Facility or the Credit Enhancer does not require the Lessee to deposit moneys monthly with the Credit Enhancer for such purpose, then the Lessee shall deposit moneys monthly with the Trustee for such purpose in the Replacement Reserve Fund and/or the Tax and Insurance Fund established pursuant to the Indenture.. The Replacement Reserve Fund and the Tax and Insurance Fund shall be disbursed in accordance with the provision of the Indenture and this Section 6.8.

The amount to be deposited monthly into the Replacement Reserve Fund in any year shall be one-twelfth of the amount established in the Lessee's annual budget for the Project for deposits into the Replacement Reserve Fund for capital improvements, replacement and repairs, including such capital improvements, replacements and repairs as shall be necessary in order to satisfy the requirements of Section 6.1 hereof; provided, that such amount shall never be lower than \$3,000 per month.

The total amount to be deposited into the Tax and Insurance Fund annually, and the fractional part of such amount to be deposited monthly, shall be determined by the Lessee so as to be sufficient for the payment of real estate taxes and insurance premiums. The Lessee shall direct the Trustee as to the application of moneys on deposit in the Tax and Insurance Fund to the payment of real estate taxes and insurance premiums.

ARTICLE VII

ADDITIONS, MODIFICATIONS AND IMPROVEMENTS TO THE PROJECT

Section 7.1. Additions, Modifications and Improvements of the Project. The Lessee shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Lessee from time to time may deem necessary or desirable for its business purposes; provided, however, the Lessee shall not make any additions, modifications or improvements which will adversely affect the operation of the Project or substantially reduce its value; and provided further that the Credit Enhancer shall have approved such additions, modifications or improvements, in an amount in excess of \$25,000, and there shall have been delivered to the City, the Trustee, the Credit Enhancer and the Lessee an Opinion of Bond Counsel stating that such additions, modifications or improvements are authorized under the Indenture and the Act, comply with the provisions thereof and will not adversely affect the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes. All additions, modifications and improvements made by the Lessee pursuant to the authority of this Section shall (a) be made in a workmanlike manner and in strict compliance with all laws and resolutions applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed in the Project by the Lessee not purchased or acquired from proceeds of the Refunded Bonds and not constituting repairs, renewals or replacements of machinery and equipment so purchased shall remain the property of the Lessee and may be removed by the Lessee.

Section 7.2. Additional Improvements on the Project Site. The Lessee shall have and is hereby given the right, at its sole cost and expense, to construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Lessee from time to time may deem necessary or desirable for its business purposes; provided that the Credit Enhancer shall have approved such additional buildings or improvements in an amount in excess of \$25,000, and there shall have been delivered to the City, the Trustee, the Credit Enhancer and the Lessee an Opinion of Bond Counsel stating that such additional buildings or improvements are authorized under the Indenture and the Act, comply with the provisions thereof and will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. All additional buildings and improvements constructed on the Project Site by the Lessee pursuant to the authority of this Section shall, during the life of this Lease, remain the property of the Lessee and may be added to, altered or razed and removed by the Lessee at any time. The Lessee covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and

tear excepted, and (c) to promptly and with due diligence either raze and remove in a good and workmanlike manner, or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty.

Section 7.3. Permits and Authorizations. The Lessee shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, resolutions, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of Article VI hereof.

Section 7.4. Mechanics' Liens.

- (a) Neither the City nor the Lessee shall do or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Lessee shall discharge the same of record within sixty (60) days after the date of filing. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Lessee or anyone claiming by, through or under the Lessee upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.
- (b) Notwithstanding paragraph (a) above, the Lessee shall have the right to contest any such mechanics' or other similar lien if within said sixty-day (60) period stated above it notifies the City, the Credit Enhancer, the Bank and the Trustee in writing of its intention so to do, and provided the Lessee diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. The Lessee shall hold the City, the Credit Enhancer, the Bank and the Trustee whole and harmless from any loss, costs or expenses the City, the Credit Enhancer, the Bank or the Trustee may incur related to any such contest. The City agrees to cooperate fully with the Lessee in any such contest.

ARTICLE VIII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.1. Damage and Destruction.

- (a) If during the Lease Term, the Project is damaged or destroyed, in whole or in part, by fire or other casualty, to such extent that the claim for loss (including any deductible amount pertaining thereto) resulting from such damage or destruction is greater than \$25,000 the Lessee shall promptly notify the City, the Credit Enhancer, the Bank and the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.
- (b) Subject to Section 8.1(e) below, if the Lessee shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Lessee shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place the Project in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair the operating unity or productive capacity of the Project or the character of the Project as an enterprise permitted by the Act. In such case, any amount of Net Proceeds of casualty insurance required by Article VI hereof received with respect to such damage or loss to the Project, if such Net Proceeds exceed \$25,000, shall be paid to the Trustee and shall be deposited into a separate account to be established in the Casualty/Condemnation Fund and shall be used and applied in accordance with the disbursement requirements of Section 8.3, hereof for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. While the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, any amount remaining in any account established for restoration purposes under the Mortgage after such rebuilding, repairing, restoring or replacing is completed shall be applied by the Credit Enhancer to reimburse any amounts paid under the Credit Facility, or held as security for the payment of such amounts, as the Credit Enhancer elects. If the Credit Facility is no longer in force and effect, and no amounts remain unreimbursed with respect thereto, or if the Credit Enhancer is in default thereunder, any amount remaining in the Casualty/Condemnation Fund after such rebuilding, repairing, restoring or replacing is completed shall be delivered to the Lessee pursuant to Section 510 of the Indenture. If said Net Proceeds are not sufficient to pay

in full the costs of such replacement, repair, rebuilding or restoration, the Lessee shall nonetheless complete the same and shall pay the costs thereof in excess of the Net Proceeds.

- (c) Subject to Section 8.1(e) below, if the Lessee shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable while the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, any Net Proceeds of casualty insurance required by Article VI hereof received with respect to such damage or loss shall be paid to the Credit Enhancer to be held as security for the Lessee's reimbursement obligations with respect to the Credit Facility, the maximum amount of Bonds that can be redeemed with an amount equal to such Net Proceeds shall be called for redemption on the earliest practicable redemption date, and the Credit Enhancer shall apply such Net Proceeds, first to reimburse itself for the amount drawn under the Credit Facility with respect to such redemption, and next to any other Obligations secured by the Mortgage in such order as the Credit Enhancer may determine. If the Credit Facility is no longer in force and effect, and no amounts remain unreimbursed with respect thereto, any such Net Proceeds of casualty insurance required by Article VI hereof received with respect to such damage or loss shall be paid into the Debt Service Fund and at the direction of the Lessee shall be used either to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds that can be purchased in the open market at a price not exceeding the par value of the Bonds plus the accrued interest thereon. The Lessee agrees to be reasonable in exercising its judgment pursuant to the immediately preceding sentence of this Section 8.1(c).
- (d) The Lessee shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Bondowners or to any abatement or diminution of the rentals payable by the Lessee under this Lease or of any other obligations of the Lessee under this Lease except as expressly provided in this Section.
- (e) Notwithstanding any provision herein contained, while the Credit Facility is in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, and except as otherwise provided in the Mortgage, the Credit Enhancer shall have the right to direct the Lessee as to all determinations of whether or not any Net Proceeds of casualty insurance will be applied to rebuilding, repairing, restoring or replacing the Project under Section 8.1(b) above, or to

reimburse the Credit Enhancer for amounts drawn under the Credit Facility with respect to redemption of Bonds under Section 8.1.(c) above, as well as with respect to rebuilding, repairing, restoring or replacing the Project as provided for in the Mortgage. If the Credit Enhancer directs the Lessee to apply Net Proceeds to reimburse the Credit Enhancer, the Lessee shall be deemed to have directed the Trustee to redeem Bonds as provided in Section 8.1.(c) above and in Section 402(d) of the Indenture.

Section 8.2. Condemnation or Insured Deficiency of Title.

- (a) If during the Lease Term, (i) title to, or the temporary use of all or any part of the Project shall be condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, or (ii) title to all or any part of the Project shall be found to be deficient or nonexistent, then while the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amounts remain unreimbursed with respect thereto, the Lessee shall promptly after the commencement of any proceedings or negotiations which might result in such damage, taking or sale notify the City, the Credit Enhancer, the Bank and the Trustee in writing as to the nature, and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements. If the Credit Facility is no longer in force and effect and no amounts remain unreimbursed with respect thereto, or the Credit Enhancer is in default thereunder, then in the event of the occurrence of either or both of the events referred to in (i) and/or (ii) above in this Section 8.2.(a), to such extent that the claim or loss resulting from such condemnation or loss of title is greater than \$25,000, the Lessee shall, within ninety (90) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, or the date of sale under threat of condemnation, or proceedings determining such loss of title, notify the City and the Trustee in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire to construct substitute improvements.
- (b) Subject to Section 8.2.(f) below, if the Lessee shall determine that such substitution is practicable and desirable, the Lessee shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed prior to the exercise of the said power of eminent domain or loss of title, including the acquisition or construction of other improvements suitable for the Lessee's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Lessee without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically

described herein and demised hereby;) provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances prior to the lien and/or security interest afforded by the Indenture other than Permitted Encumbrances. In such case any amount of Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, or of title insurance received with respect to any such loss of title, if such Net Proceeds exceed \$25,000, shall be paid to the Trustee and shall be deposited into a separate account to be established in the Casualty/Condemnation Fund and shall be used and applied in accordance with the disbursement requirements of Section 8.3 hereof for the purpose of paying the cost of such substitution. While the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amount remains unreimbursed with respect thereto, any amount remaining in any account established for condemnation repairs purposes under the Mortgage after such substitution is completed shall be applied by the Credit Enhancer to reimburse any amounts paid under the Credit Facility, or held as security for the payment of such amounts, as the Credit Enhancer elects. If the Credit Facility is no longer in force and effect, and no amounts remain unreimbursed with respect thereto, any amount remaining in the Casualty/Condemnation Fund after the cost of such substitution is paid shall be delivered to the Lessee pursuant to Section 510 of the Indenture.

- (c) Subject to Section 8.2.(f) below, if the Lessee shall determine that it is not practicable and desirable to acquire or construct substitute improvements, then while the Credit Facility remains in force and effect, and the Credit Enhancer is not in default thereunder or any amount remains unreimbursed with respect thereto, any Net Proceeds of condemnation awards or title insurance received by the Lessee shall be paid to the Credit Enhancer to be held as security for the Lessee's reimbursement obligations with respect to the Credit Facility, the maximum amount of Bonds that can be redeemed with an amount equal to such Net Proceeds shall be called for redemption on the earliest practicable redemption date, and the Credit Enhancer shall apply such Net Proceeds, first to reimburse itself for the amount drawn under the Credit Facility with respect to such redemption, and next to any other Obligations secured by the Mortgage in such order as the Credit Enhancer may determine. If the Credit Enhancer is no longer in force and effect, and no amounts remain unreimbursed with respect thereto, or the Credit Enhancer is in default thereunder, any such Net Proceeds of condemnation awards or title insurance received by the Lessee shall be paid into the Debt Service Fund and shall be used at the direction of the Lessee to either redeem Bonds on the earliest practicable redemption date or to pay the

principal of any Bonds that can be purchased in the open market at a price not exceeding the par value of the Bonds plus the accrued interest thereon.

- (d) The Lessee shall not, by reason of its inability to use all or any part of the Project during any such period or restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Bondowners or to any abatement or diminution of the rentals payable by the Lessee under this Lease nor of any other obligations hereunder except as expressly provided in this Section.
- (e) The City agrees to cooperate fully with the Lessee and the Credit Enhancer in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Lessee or the Credit Enhancer to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Lessee and, while the Credit Facility remains in force and effect and the Credit Enhancer is not in default thereunder, or any amount remains unreimbursed with respect thereto, the prior written consent of the Credit Enhancer.
- (f) Notwithstanding any provision herein contained, while the Credit Facility is in force and effect and the Credit Enhancer is not in default thereunder, or any amount remains unreimbursed with respect thereto, and except as otherwise provided in the Mortgage, the Credit Enhancer shall have the right to direct the Lessee as to all determinations of whether or not any Net Proceeds of condemnation awards or title insurance received by the Lessee will be applied to substitution of improvements under Section 8.2.(b) above, or to reimburse the Credit Enhancer for amounts drawn under the Credit Facility with respect to redemption of Bonds under Section 8.2.(c) above, as well as with respect to substitution of improvements all as provided for in the Mortgage. If the Credit Enhancer directs the Lessee to apply Net Proceeds to reimburse the Credit Enhancer, the Lessee shall be deemed to have directed the Trustee to redeem Bonds as provided in Section 8.2.(c) above and in Section 402(d) of the Indenture.

Section 8.3. Casualty/Condemnation Fund.

- (a) All costs relating to the repair of a casualty loss or substitution of a condemnation loss in connection with the Project shall be paid by the Trustee from moneys available in the Casualty/Condemnation Fund, to the extent moneys are available, and the City hereby authorizes and directs the

Trustee to make disbursements from the Casualty/Condemnation Fund upon receipt by the Trustee of certificates signed by both the Lessee and its Independent Engineer and approved by the Credit Enhancer:

- (i) requesting payment of a specified amount of such funds and stating the name and address of the person, firm or corporation to whom such amount shall be paid;
- (ii) describing in reasonable detail each item for which payment is being requested;
- (iii) stating that each item for which payment is requested is or was necessary and appropriate in connection with the repair of a casualty loss or substitution of a condemnation loss in connection with the Project, has been properly incurred and is a proper charge against the Casualty/Condemnation Fund that the amount requested either has been paid, or is justly due, and has not been the basis of any previous requisition from the Casualty/Condemnation Fund; and
- (iv) stating that, except for the amounts, if any, stated in said certificate, to the best of their knowledge there are no outstanding statements which are then due and payable for labor, wages, materials, supplies or services in connection with the repair of a casualty loss or substitution of a condemnation loss in connection with the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project or any part thereof, or setting out (A) all disputed statements and the reason for such disputes, and (B) all statements in process but not yet presented to the Trustee for payment.

In making disbursements from the Casualty/Condemnation Fund, the Trustee shall be entitled to conclusively rely upon the written requisition provided by the Lessee and its engineer or architect without inquiry or investigation; provided that there shall have been delivered to the City, the Trustee, the Credit Enhancer and the Lessee an Opinion of Bond Counsel stating that such disbursements from the Casualty/Condemnation Fund are authorized under the Indenture and the Act, comply with the provisions thereof and will not adversely affect the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes. It is understood that the Trustee shall not make any inspections of the Project nor any improvements thereon, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise any repair of a casualty loss or substitution of a condemnation loss. The approval of each requisition by the Lessee and its engineer or architect, shall constitute

unto the Trustee an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Casualty/Condemnation Fund have been completed. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith.

- (b) Notwithstanding any provision herein contained, while the Credit Facility is in force and effect and the Credit Enhancer is not in default thereunder, or any amount remains unreimbursed with respect thereto, the Credit Enhancer shall have the right to direct the time and method of the application of the Casualty/Condemnation Fund.

ARTICLE IX

SPECIAL COVENANTS

Section 9.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Lessee's purposes or needs. The Lessee releases the Trustee and the City from, agrees that the Trustee and the City shall not be liable for and agrees to hold the City and Trustee harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever (except those which have arisen from the willful misconduct or negligence of the City or the Trustee) pertaining to the Project or the use thereof.

Section 9.2. Surrender of Possession. Upon accrual of the City's right of reentry because of the Lessee's default hereunder or upon the cancellation or termination of this Lease for any reason other than the Lessee's purchase of the Project pursuant to Article XI hereof, the Lessee shall peacefully surrender possession of the Project to the City in good condition and repair, ordinary wear and tear excepted. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Lessee, and the Lessee shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Lessee and which are not so removed from the Project shall be the separate and absolute property of the City. While the Credit Facility is in force and effect and the Credit Enhancer is not in default thereunder, the City shall follow the direction of the Credit Enhancer with respect to the Project.

Section 9.3. City's, Credit Enhancer's, the Bank's and Trustee's Right of Access to the Project. The Lessee agrees that the City, the Credit Enhancer, the Bank and the Trustee and their duly authorized agents shall have the right, to be reasonably exercised, to enter into the Project Site at reasonable times during business hours (a) to examine, test

and inspect the Project without interference or prejudice to the Lessee's operations, (b) to perform such work in and about the Project made necessary by reason of the Lessee's default under any of the provisions of this Lease, and (c) to exhibit the Project to prospective purchasers, lessees or trustees.

Section 9.4. Lessee to Maintain its Existence. The Lessee agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Lessee may, without violating the agreement contained in this Section, consolidate with or merge into another partnership, a domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or other entity or permit one or more other partnerships, domestic corporations or entities to consolidate with or merge into it, or may sell or otherwise transfer to another partnership, domestic corporation or other entity all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee partnership, corporation, or other entity expressly assumes in writing all the obligations of the Lessee contained in this Lease; and, further provided, that the surviving, resulting or transferee partnership, corporation or entity, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least equal to that of the Lessee immediately prior to said consolidation, merger or transfer. The term "net worth" as used in this Article, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Lessee. In any such consolidation, merger or transfer the Lessee shall comply with the provisions of Sections 9.10 and 10.1 hereof to the extent applicable.

The Lessee or any of its transferees may enter into any of the transactions described in this Section only if in the opinion of Bond Counsel delivered to the City, the Trustee and the Credit Enhancer the consummation thereof (a) will not adversely affect the validity of the Bonds or the exemption from federal income tax of the interest on the Series A Bonds after giving effect to such transaction, and (b) is not prohibited by the Act.

If a transfer of assets is made as provided in this Section, the provisions of this Section shall continue in full force and effect and no further such transfer of assets shall be made except in compliance with the provisions of this Section.

As a condition precedent to any such transfer, the transferee, surviving or resulting entity shall provide written notice of the event to the City and the Trustee and evidence reasonably satisfactory to the City and the Trustee that all requirements of this Section have been satisfied.

Notwithstanding the foregoing, the Lessee shall have the right to change or add limited or general partners without the consent of or notice to the City or the Trustee, so long such change or addition of limited or general partners is approved by the Credit Enhancer and the Credit Facility remains in full force and effect thereafter.

Section 9.5. Granting of Easements. If no event of default under this Lease shall have happened and be continuing, the Lessee may at any time or times with the prior approval of the Credit Enhancer (a) grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Lessee shall determine. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City, the Credit Enhancer and the Trustee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Lessee and approved by the Credit Enhancer requesting such instrument; and (iii) a certificate executed by the Lessee stating that such grant or release is not detrimental to the proper conduct of the business of the Lessee, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Indenture. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the City, the Credit Enhancer and the Trustee under this Lease and the Indenture and shall not be affected by any termination of this Lease or default on the part of the Lessee hereunder. If no event of default shall have happened and be continuing, any payments or other consideration received by the Lessee for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Lessee, but in the event of the termination of this Lease or default of the Lessee, all rights then existing of the Lessee with respect to or under such grant shall inure to the benefit of and be exercisable by the City, the Credit Enhancer and the Trustee.

Section 9.6. Indemnification of City, Remarketing Agent, Credit Enhancer and Trustee. The Lessee shall indemnify and save the City, the Remarketing Agent, the Credit Enhancer and the Trustee harmless from and against all claims, demands, liabilities and losses by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the Lease Term, and against and from all claims arising during the Lease Term (except those which have arisen from the willful misconduct or negligence of the Credit Enhancer, the Remarketing Agent, the City or the Trustee) from (a) any condition of the Project caused by the Lessee and any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project, (b) any breach or default on the part of the Lessee in the performance of any of its obligations under this Lease or the Lessee Documents, (c) any contract entered into in connection with the acquisition, purchase, construction and installation of the Project, (d) any act of negligence of the Lessee or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the Lessee, or of any agents, contractors, servants, employees

or licensees of any assignee or sublessee of the Lessee. The Lessee shall indemnify and save the City, the Remarketing Agent, the Credit Enhancer and the Trustee harmless from and against all costs, claims, demands, liabilities, losses and expenses including but not limited to, those items referenced in Sections 6.2(b) and 7.4(b) of this Lease (except those which have arisen from the willful misconduct or negligence of the Credit Enhancer, the Remarketing Agent, the City or the Trustee) incurred in or in connection with any action or proceeding brought thereon, to this Lease, the Indenture and the Bonds, and upon notice from the Credit Enhancer, the Remarketing Agent, the City or the Trustee, the Lessee agrees to defend them or any of them in any such action or proceeding.

Section 9.7. Depreciation and Investment Tax Credit. The City agrees that any depreciation or investment tax credit with respect to the Project or any part thereof shall be made available to the Lessee, and the City will fully cooperate with the Lessee in any effort by the Lessee to avail itself of any such depreciation or investment tax credit.

Section 9.8. Lessee's Financial Statements. So long as any of the Bonds are Outstanding, the Lessee shall deliver to the Credit Enhancer, the Bank, the Remarketing Agent and the Trustee, as soon as available, a copy of its unaudited financial statements for each of its fiscal years within 120 days after the end of such fiscal year accompanied by a certificate of the Authorized Lessee Representative stating (a) that the information contained in such statements is true and correct, and (b) that, to the best of such person's knowledge after reasonable investigation, no Default exists, and if there is such a Default, specifying the nature and period of existence thereof and what action, if any, the Lessee is taking or proposes to take with respect thereto.

Section 9.9. Security Interests. The City and the Lessee agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City, the Trustee and the Credit Enhancer in the Project. The Lessee shall file or cause to be filed all such instruments required to be so filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding.

Section 9.10. Arbitrage Covenant. The Lessee covenants and agrees that it will not make or cause or permit to be made, whether by the Trustee or otherwise, any use of the proceeds of the Bonds which, if such use had been reasonably expected on the date of issuance of the Bonds, would have caused the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code. The Lessee further covenants and agrees that it will comply with and will take all action reasonably required to insure that the Trustee complies with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department thereunder for so long as any of the Bonds, including interest thereon and any applicable redemption premium, remain Outstanding and unpaid. The Lessee agrees that it will cooperate in the appointment of an individual or firm having expertise in calculations related to Rebutable Arbitrage and rebatable amounts and agrees

that all rebate calculations will be performed by such an individual or firm and that the Lessee will pay all costs associated therewith.

Section 9.11. Tax Exempt Status of Bonds. The Lessee covenants that it will not take or omit to take any action nor permit any action to be taken or omitted which would cause the interest on the Bonds to become subject to federal income taxes under then current law, provided, that the Lessee shall not have violated this covenant if the interest on any of the Bonds becomes taxable to a person who is a substantial user of the Project or a related person thereto pursuant to the provisions of Section 147(a) of the Code.

Section 9.12. Litigation Notice. The Lessee shall give the Trustee, the Remarketing Agent, the Credit Enhancer and the Bank prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, or of any of the same which may be threatened, which, if adversely determined, would materially impair the right of the Lessee to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect its business, operations, properties, assets or condition. Within five (5) Business Days after the filing by or against the Lessee of a petition in bankruptcy, the Lessee shall notify the Trustee, the Remarketing Agent, the Credit Enhancer and the Bank in writing as to the occurrence of such filing.

Section 9.13. Continuing Disclosure. As initially issued in the Weekly Rate, the Bonds are exempt from the disclosure requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, and neither the Lessee nor the City is under any obligation under the Rule to provide or cause to be provided any annual financial information, operating data or notices of certain material events with respect to the Bonds. In the event such exemption from the Rule shall for any reason no longer apply, the Lessee will provide or cause to be provided, in accordance with the requirements of the Rule (i) certain annual financial information and operating data, if customarily prepared and publicly available, and (ii) timely notice of the occurrence of certain material events with respect to the Bonds, and will take all other actions as are necessary and appropriate to comply with and carry out the continuing disclosure requirements of the Rule.

ARTICLE X

ASSIGNMENT AND SUBLEASING

Section 10.1. Assignment and Sublease.

- (a) The Lessee will not assign, mortgage, pledge, sell or in any other manner transfer, convey, sublease or dispose of this Lease or any interest therein or part thereof, whether voluntary, involuntary or by operation of law, without

the prior written consent thereto of the City and the Credit Enhancer, except as otherwise provided herein. No assignment, mortgage, pledge, sale, other transfer, conveyance, disposition or sublease shall release or discharge the Lessee from its duties and obligations under this Lease, except as otherwise provided herein. Any consent by the City and the Credit Enhancer to any of the aforesaid acts shall be held to apply only to the specific transaction thereby authorized; such consent shall not be construed as a waiver or release of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the City and the Credit Enhancer consent to any other such acts. The Lessee shall give written notice to the Trustee of any such assignment, mortgage, pledge, sale, other transfer, conveyance, disposition or sublease. It is understood and agreed that the Lessee operates the Project as multifamily housing rental property and that a portion of the Project will be rented or subleased to residential tenants without the prior written consent of the City, the Trustee or Credit Enhancer.

- (b) Notwithstanding the provisions of subparagraph (a) above, if the Lessee shall assign its interests in this Lease in connection with a transaction involving the merger or consolidation of the Lessee with or into another partnership, corporation or other entity pursuant to Section 9.4 hereof, or a sale, lease or other disposition or all or substantially all of the property of the Lessee as an entirety to another partnership, corporation or other entity, and (i) the City and the Credit Enhancer shall file with the Trustee their prior written consent to such assignment, (ii) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Lessee under this Lease and the Guaranty Agreement with respect to the Bonds, and (iii) the Lessee shall furnish the Trustee, the City and the Credit Enhancer with evidence in the form of financial statements accompanied by the certificate of an independent certified public accountant of recognized standing and acceptable to the City and the Credit Enhancer, establishing that the net worth of such proposed assignee immediately following such assignment will be at least equal to the net worth of the Lessee as shown by the most recent financial statement of the Lessee furnished to the Trustee pursuant to this Lease and/or to the Credit Enhancer and/or the Bank pursuant to the Reimbursement Agreement, and (iv) the Guaranty shall be assigned to such assignee pursuant to Section 4.4 of the Guaranty; then and in such event the Lessee shall be fully released from all obligations according hereunder after the date of such assignment.

Section 10.2. Assignment of Revenues by City. Concurrently with the execution of this Lease, the City has assigned and pledged any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Lessee hereby consents to such pledge and assignment.

Section 10.3. Restrictions on Sale of Project by City. The City agrees that, except as set forth in Section 10.2 hereof or in other provisions of this Lease or the Indenture, the City may not sell, convey, encumber or otherwise dispose of any part of the Project during the Lease Term.

Section 10.4 Credit Enhancer's and/or the Bank's Remedial Rights. The City and the Lessee hereby acknowledge and agree that should the Credit Enhancer and/or the Bank exercise certain of its remedial rights under the Collateral Documents, the Credit Enhancer and/or the Bank (or an affiliate or designee thereof) may (a) become the sole partner of the Lessee, or (b) become successor in interest to the Lessee hereunder. In such event the City and the Lessee agree to the exercise of such remedial rights. No such exercise of the Credit Enhancer's and/or the Bank's rights under the Collateral Documents shall require, as a condition precedent, either (i) the further consent of the City, the Trustee or the Bondowners, or (ii) the acceleration of the Bonds (unless the Credit Enhancer and/or the Bank elects such in its sole discretion).

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Lessee shall have, and is hereby granted, the option to purchase the Project at any time prior to the expiration of the Lease Term upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to Article XII of the Indenture and satisfaction of the terms and conditions of this Article XI. To exercise such option the Lessee shall give written notice to the City, to the Credit Enhancer, to the Bank and to the Trustee, if any of the Bonds shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Indenture, and shall specify therein the date of closing such purchase, which date shall be not less than forty-five (45) nor more than ninety (90) days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Lessee shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption; provided that while the Credit Facility is in full force and effect, the prior written approval of the Credit Enhancer shall be required. The Lessee shall further provide the Trustee and the City with such indemnification, assurances, insurances and documents as the Trustee or the City may require. The purchase price payable by the Lessee in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Debt Service Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date,

including, without limitation, principal, premium, if any, and interest to accrue to said redemption date and redemption expense; plus

- (b) an amount of money equal to the Trustee's fees, advances, charges, indemnities and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to the City's costs and expenses, including attorney fees, in connection with the redemption of the Bonds; plus
- (d) the sum of \$1,000.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price and such documents and assurances as the City shall require of the Lessee deliver to the Lessee the following:

- (a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project.
- (b) Documents conveying to the Lessee legal title to the Project, as it then exists, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City, including but not limited to the Mortgage; (ii) those liens and encumbrances created by the Lessee or to the creation or suffering of which the Lessee consented; (iii) those liens and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease; and (iv) if the Project is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The option granted to the Lessee in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Lessee hereby agrees to purchase, and the City hereby agrees to sell, the Project for the sum of \$1,000 at the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture and satisfaction of the terms and conditions of this Article XI, including payment of all fees, charges, advances, indemnities and expenses of the City and Trustee. If any amount remains unpaid under any of the Collateral Documents following such payment in full of

the Bonds or provision therefor, the Credit Enhancer and/or the Bank may (in lieu of the Lessee) carry out such obligation for the benefit of the Credit Enhancer and/or the Bank.

ARTICLE XII

DEFAULT AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "event of default" or "default" under this Lease:

- (a) Default in the due and punctual payment of Rental Payments or Additional Payments; or
- (b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Lessee's part to be observed or performed, which default shall continue for sixty (60) days after the City, the Credit Enhancer or the Trustee has given the Lessee and the City, Credit Enhancer and/or Trustee written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (i) the Lessee or the Credit Enhancer has commenced such cure within said sixty-day (60) period, and (ii) the Lessee or the Credit Enhancer diligently prosecutes such cure to completion); or
- (c) An Act of Bankruptcy with respect to the Lessee or any of its general partners shall have occurred; or
- (d) The Lessee shall vacate or abandon the Project, or shall have been ejected from the Project or any portion thereof by reason of a defect in title to the Project, and the same shall remain uncared for and unoccupied for a period of sixty (60) days; or
- (e) The Lessee shall fail to make any tax or special assessment payment when due, unless the Lessee shall have followed the provisions of Section 6.2(b) hereof with respect to any contested tax or assessment payment; or
- (f) The occurrence of an Event of Default as defined in the Indenture or the Land Use Restriction Agreement; or
- (g) An event of default under the Collateral Documents; provided that the Credit Enhancer and/or the Bank shall have given notice thereof to the Trustee and shall have directed the Trustee as the assignee of the City under this Lease to

exercise remedies hereunder on behalf of the Credit Enhancer and/or the Bank.

Section 12.2. Remedies on Default. If any event of default referred to in Section 12.1 hereof shall have occurred and be continuing, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

- (a) cause all amounts payable with respect to the Bonds for the remainder of the term of the Lease to become due and payable, as provided in the Indenture; or
- (b) give the Lessee written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than thirty (30) days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Lessee's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project; or
- (c) without terminating this Lease, re-enter the Project or take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Project without terminating this Lease, the City shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City may deem advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project by the City shall be construed as an election on the City's part to terminate this Lease, and no such re-entry or taking of possession by the City shall relieve the Lessee of its obligation to pay Rental Payments or Additional Payments (at the time or times provided herein), or of any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the Lessee shall continue to pay the Rental Payments and Additional Payments provided for in this Lease until the end of the Lease Term, whether or not the Project shall have been relet, less the net proceeds, if any, of any reletting of the Project after deducting all of the City's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Said net proceeds of any reletting shall be deposited in the Revenue Fund. The Lessee waives trial by jury in any such proceedings; or

- (d) Take whatever other action at law or in equity, including causing the appointment of a receiver or receivers for the Lessee and/or its assets, taking all actions necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein or in the Indenture, as may appear necessary or desirable to collect the amounts payable pursuant to this Lease then due and thereafter to become due or to enforce the performance and observance of any obligation, agreement or covenant of the Lessee under this Lease or the Indenture.

Having elected to re-enter or take possession of the Project without terminating this Lease under (c) above, the City may (subject, however, to any restrictions against termination of this Lease in the Indenture), by notice to the Lessee given at any time thereafter while the Lessee is in default in the payment of Rental Payments or Additional Payments or in the performance of any other obligation under this Lease, elect to terminate this Lease on a date to be specified, in such notice, which date shall be not earlier than thirty (30) days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If, in accordance with any of the foregoing provisions of this Article, the City shall have the right to elect to re-enter and take possession of the Project, the City may enter and expel the Lessee and those claiming by, through or under the Lessee (other than the Credit Enhancer and the affiliates and designees thereof, if the Credit Facility is in force and effect and the Credit Enhancer is not in default thereunder) and remove the property and effects of both or either (forcibly, if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

Section 12.3. Survival of Obligations. The Lessee covenants and agrees with the City, the Trustee, the Credit Enhancer, the Bank and the Bondowners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Lessee shall continue to pay the Rental Payments and Additional Payments and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that upon the payment of all Rental Payments and Additional Payments required under Article V hereof, and upon the satisfaction and discharge of the Indenture under Section 1201 thereof, the Lessee's obligation under this Lease shall thereupon cease and terminate in full except for any obligation that may arise pursuant to Section 9.6.

Section 12.4. Performance of the Lessee's Obligations by the City or the Credit Enhancer and/or the Bank. If the Lessee shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City, or the Trustee in the City's name, or the Credit Enhancer and/or the Bank may (but shall not be obligated so to do) upon the continuance of such failure on

the Lessee's part for sixty (60) days after notice of such failure is given the Lessee by the City, the Credit Enhancer or the Trustee, and without waiving or releasing the Lessee from any obligation hereunder, make any such payment or perform any such obligation, and all sums so paid by the City, the Credit Enhancer and/or the Bank or the Trustee and all necessary and incidental costs and expenses incurred by the City, the Credit Enhancer and/or the Bank or the Trustee in performing such obligations shall be deemed Additional Payments or payments due under the Collateral Documents, as applicable, and shall be paid to the City, the Credit Enhancer and/or the Bank or the Trustee on demand, and if not so paid by the Lessee, the City, the Credit Enhancer and/or the Bank or the Trustee shall have the same rights and remedies provided for in Section 12.2 hereof or in the Collateral Documents as applicable, in the case of default by the Lessee in the payment of Rental Payments or payments due under the Collateral Documents, as applicable.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City, the Credit Enhancer and the Lessee hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City, the Credit Enhancer and the Lessee shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Lessee of any covenant, agreement or undertaking by the Lessee, the City may nevertheless accept from the Lessee any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults which were in existence at the time such payment or payments were accepted by the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any event of default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

Section 12.8. Credit Enhancer to Direct Trustee. Any provision herein to the contrary notwithstanding, unless an Event of Default described in subparagraphs (a), (b), (c) or (e)(i) of Section 801 of the Indenture shall have occurred and be continuing, the City and the Trustee, as assignee of the City, shall (subject to the requirements of Section 901(1) of the Indenture) exercise the remedies provided for hereunder only if and as directed in writing by the Credit Enhancer and shall not waive any Event of Default without the prior

written consent of the Credit Enhancer; provided that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture.

ARTICLE XIII

ENVIRONMENTAL COMPLIANCE

Section 13.1. Compliance with Law; Hazardous Materials. The Lessee shall comply with all environmental laws, ordinances, regulations, covenants, conditions and restrictions affecting the Project and the Project Site and operation thereof, and shall pay all fees or charges of any kind in connection therewith. The Lessee will perform and comply promptly with, and cause the Project and the Project Site to be maintained, used and operated in accordance with, any and all (a) present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency applicable to the Lessee or the Project and the Project Site, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus; (b) applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (c) applicable duties or obligations of any kind imposed under any Permitted Encumbrance, or otherwise by law, covenant, condition, agreement or easement, public or private; and (d) policies of insurance at any time in force with respect to the Project and the Project Site. If the Lessee receives any notice that the Lessee is in default under or is not in compliance with any of the foregoing, or receives notice of any proceeding initiated under or with respect to any of the foregoing, the Lessee will promptly furnish a copy of such notice to the Trustee, the City, the Credit Enhancer and the Bank.

The Lessee represents and warrants that neither the Lessee nor, to the best of the Lessee's knowledge, any previous owner or user of the Project or the Project Site, used, generated, stored (other than such materials that are necessary for the Lessee's conduct of its business activities on the Project or the Project Site or which are necessary for tenants of Lessee to conduct their respective activities on the Project or the Project Site and which are in compliance with all applicable federal, state and local laws relating to the storage of such materials) or disposed of, on, under or about the Project or the Project Site any hazardous waste, toxic substances or related materials and underground tanks (hereafter referred to as "Hazardous Materials"). For the purpose of this Lease, Hazardous Materials shall include, but shall not be limited to, any substances, material, or waste which is or becomes regulated by any State or Local government authority or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. Further the Lessee agrees that it will not

permit the storage of toxic and/or Hazardous Materials (other than such materials that are necessary for the Lessee's conduct of its business activities on the Project or the Project Site or which are necessary for tenants of Lessee to conduct their respective activities on the Project or the Project Site and which are in compliance with all applicable federal, state and local laws relating to the storage of such materials) in, on and/or around the Project or the Project Site now or at any future time and will indemnify and hold the Trustee, the City and the Credit Enhancer harmless from and against any loss, liability, cost, fees, expense or action(s) which may result in connection with Hazardous Materials and/or toxic material(s) as they relate to the Project or the Project Site.

If at any time it is determined that there are any toxic and/or Hazardous Materials located on the Project or the Project Site in violation of applicable laws and regulations, the Lessee shall diligently commence to take such action, at its sole expense, to comply with all environmental requirements pertaining to such materials. Failure of the Lessee to comply with all environmental requirements of federal, state or local law, statute, ordinance or regulation, rule, court or administrative order or decree, or private agreement, shall constitute and be a default under Article XII of this Lease and the Trustee, the City and the Credit Enhancer shall have the option to require specific performance of the Lessee's obligations hereunder. The Lessee shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, easement or other public or private restrictions limiting or defining the uses which may be made of the Project or the Project Site or any part thereof, without the Trustee's, the City's and the Credit Enhancer's consent.

In the event that the Trustee has reason to believe or reasonable need to determine that the storage or use of materials on the Project or the Project Site may create an environmental hazard, or that environmental contamination may have occurred, the Trustee shall have the right, but not the obligation, to require that the Lessee hire, or, if the Lessee fails to do so the City, the Trustee or the Credit Enhancer may hire, a firm to conduct, at the expense of the Lessee, an environmental audit. In the event that the Trustee hires a firm to conduct an environmental audit, the Trustee and/or its agents may enter the Project or the Project Site at any time and perform such acts, and collect such samples (including borings of the Project Site) as the Trustee or its agents in their sole discretion shall determine are necessary.

The Lessee represents and warrants that it has obtained all required licenses, permits, franchise agreements and other necessary agreements to operate the Project and the Project Site as contemplated by this Lease. The Lessee agrees to provide the Trustee, the City, the Credit Enhancer and the Bank with written notice of any suspension, revocation, termination or default under any such agreements or any threatened suspension, revocation, termination or default thereunder.

The Lessee shall do all things necessary to comply with and take no action that would create a default by the Lessee under the terms of the Lease.

Section 13.2. Environmental Covenants With Respect to Furnishing Lawful Authorities With Information; Operations of Business and Clean-Up Procedures. The Lessee covenants as follows:

- (a) The Lessee shall furnish to the United States Environmental Protection Agency, or any lawful authority all information lawfully requested by them with respect to the operations of the Project or the Project Site.
- (b) The Lessee shall not cause or permit to exist as a result of an intentional or unintentional act or omission on its part, or on the part of any person or entity under its control, or with which it has a contractual relationship, any "release," as defined in CERCLA Section 9601(22), of any Hazardous Material, pollutant or contaminant, or the otherwise disposal of any waste or any Hazardous Material into any waters or onto any lands where damages may result to the lands, waters, fish, shellfish, wildlife, biota or air unless such release or disposal is pursuant to and in compliance with all applicable environmental regulations.
- (c) In the event any local governmental authority, any state or the federal government, or any agency of either, including, but not limited to, the United States Environmental Protection Agency, notifies the Lessee that any "removal" or "remedial action" (as these terms are defined in 42 U.S.C.A. Sections 9602(23) and (24)) or any clean-up operations of any kind or nature are necessary to be performed on the Project or the Project Site or in the event any of said authorities commence, perform or complete any clean-up operation, then the Lessee shall promptly, and in any event within five days of such notice or the commencement, performance or completion, whichever is earlier, begin such clean-up operation and shall notify the Trustee thereof, and the Lessee shall promptly and in any event within thirty (30) days of such notice or the commencement, performance or completion of any clean-up operation, do the following as appropriate:
 - (i) perform such clean-up operation;
 - (ii) complete the performance of any clean-up operation commenced by said authority and reimburse said authority for the cost thereof if required by law to do so; or
 - (iii) fully reimburse said authority for any clean-up operation performed as required by law and obtain a release therefrom or furnish to Trustee an amount sufficient to perform, complete or reimburse for any clean-up operation which has been or may be required to be performed, which amount may be (A) a bond satisfactory to the

Trustee; (B) a cash deposit; or (C) other security satisfactory to the Trustee.

If the Lessee fails to remove any Hazardous Material or otherwise comply with the requirements of the governmental agencies referenced in this subparagraph (c), the Trustee may, after notice to the Lessee, the City and the Credit Enhancer and the expiration of the earlier of (A) the cure period, if any, for failure to perform a covenant of the Lease or (B) the cure period permitted under the requirements of the governmental agency referenced in this subparagraph (c), declare a default as otherwise noted in Section 12.1 hereof, or do whatever is necessary to either eliminate such Hazardous Material from the Project or the Project Site or otherwise cause compliance with the requirements of the governmental agencies referenced in this subparagraph (c). All losses, costs, damages, claims, and expenses incurred by the City, the Trustee or the Credit Enhancer on account of the Lessee's failure to perform the obligations described in this Section 13.2 shall be immediately due and payable with interest thereon at a rate two percent (2%) above Trustee's Base Rate from the date incurred by the Trustee (or, in the case of the Credit Enhancer, such other rate as is provided for in the Reimbursement Agreement). The Lessee acknowledges that in the event any Hazardous Substance is removed from the Project or the Project Site by the Lessee, the Credit Enhancer or by the Trustee, the Environmental Protection Agency Number assigned to such Hazardous Substance shall be in the name of the Lessee and the Lessee shall assume all of the Trustee's or the Credit Enhancer's potential and actual liability for the removal of such Hazardous Substance. The Lessee shall give and does hereby grant to Trustee, the Credit Enhancer and their agents and employees access to the Project and the Project Site and hereby specifically grants the Trustee and the Credit Enhancer a license, effective upon expiration of the applicable cure period, if any, to remove such materials in order to comply with the requirements of the governmental agencies referenced in this subparagraph (c).

Section 13.3 Obligations under Collateral Documents. The provisions of this Article shall be in addition to, and not in lieu of, any requirements contained in the Collateral Documents relating to the subject matter of this Article.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the initial issuance of the Bonds and prior to the payment thereof having been made in accordance with the provision of the Indenture, this Lease may not be amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, and while the Credit Facility is in full force and effect, the prior written consent of the Credit Enhancer, and any such amendment, change or modification shall comply with the provisions of Article XI of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by registered or certified mail, postage prepaid, addressed as follows:

(a) To the City:

City of Topeka, Kansas
Topeka City Hall
214 E. Eighth Street
Topeka, Kansas 66604
Attention: Finance Director
Telephone: (785) 368-3970
Telecopier: (758) 368-3975

(b) To the Trustee:

Security Bank of Kansas City
5800 Foxridge Drive, Suite 400
Mission, Kansas 66202-2388
Attention: Corporate Trust Department
Telephone: (913) 671-3105
Telecopier: (913) 671-3127

(c) To the Lessee:

Hickok Master Limited Partnership
c/o Hickok-Dible Companies
6201 College Blvd., Suite 210
Overland Park, Kansas 66211
Attention: Mr. Timothy W. Hickok
Telephone: (913) 451-1784
Telecopier: (913) 722-3094

with a copy to

Husch & Eppenger, L.L.C.
1200 Main Street, Suite 1700
Kansas City, Missouri 64105
Attention: C. Christian Kirley, Esq.
Telephone: (816) 283-4625
Telecopier: (816) 421-0596

(d) To the Credit Enhancer:

LaSalle Bank National Association
200 West Monroe Street
Suite 1100
Chicago, Illinois 60606-5002
(312) 904-4593
(312) 904-2340 – Telecopier

with a copy to:

Gold Bank, N.A.
800 W. 47th Street
Kansas City, Missouri 64112
Attention: Internal Department
Telephone: (816) 561-4669
Telecopier: (816) 531-0735

and with a copy to:

Stinson, Mag & Fizzel
1201 Walnut, Suite 2800
Kansas City, Missouri 64141
Attention: Ronald D. Tym, Esq.
Telephone: (816) 842-8600
Telecopier: (816) 691-3495

(e) To the Remarketing Agent:

Midwest Capital Management, Inc.
10975 El Monte, Suite 225
Overland Park, Kansas 66211
(913) 396-0300
(913) 491-6972 – Telecopier

Stern Brothers & Co.
8000 Maryland Avenue, Suite 1020
St. Louis, Missouri 63105
Attention: Mr. Donald A. Estell
Telephone: (314) 727-5519
Telecopier: (314) 727-7313

All notices given by first-class, postage prepaid, certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Lessee to the other shall also be given to the Trustee, the Credit Enhancer and the Remarketing Agent. In the event of notice by or to any other party other than the City or the Lessee, a copy of the notice shall be provided to the City, the Trustee, the Lessee and the Remarketing Agent. The City, the Lessee, the Trustee, the Credit Enhancer and the Remarketing Agent may from time to time designate, by notice given hereunder to the other of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals.

Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold, delay or refuse to give such approvals or consents or delay or refuse to execute such supplemental agreements or schedules.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a "net lease," (b) that the payments of Rental Payments are designed to provide the City and the Trustee funds adequate in amount to pay all principal

of, premium, if any, and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Rental Payments are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Lessee shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Payments, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of, premium, if any, and interest on the Bonds and all costs incident to the payment of the Bonds have been paid in full, all amounts due and payable to the Credit Enhancer under the LaSalle Reimbursement Agreement have been paid in full and all amounts due and payable to the Bank under the Reimbursement Agreement have been paid in full, the Trustee or the City holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, after payment therefrom of all sums then due and owing by the Lessee under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Lessee.

Section 15.4. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Kansas.

Section 15.5. Governing Law. This Lease shall be governed by, construed and interpreted in accordance with the laws of the State of Kansas.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Lessee and their respective successors and assigns. The City and the Lessee acknowledge that the Credit Enhancer and the Bank are third-party beneficiaries of those provisions herein which relate to the making of payments or giving of notice to or consents by or following the directions of or the performance of other acts to benefit each of them, as applicable, and all such provisions shall be enforceable by the Credit Enhancer or the Bank, as applicable.

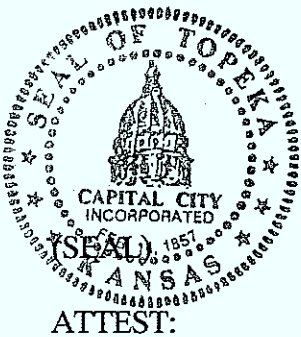
Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

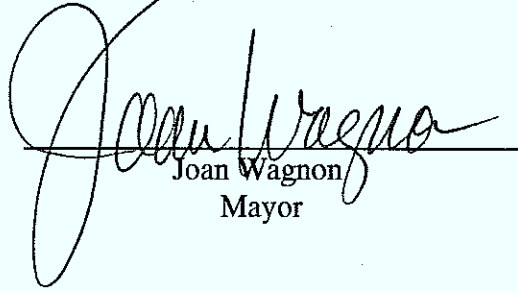
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names and the City has caused its corporate seal to be hereunto affixed and attested by its duly authorized officials, all as of the date first above written.

THIS LEASE AGREEMENT is hereby executed as of the date first hereinabove written.

CITY OF TOPEKA, KANSAS



By:


Joan Wagnon
Mayor



City Clerk

THIS LEASE AGREEMENT is hereby executed as of the date first hereinabove written.

HICKOK MASTER LIMITED PARTNERSHIP

By: 
General Partner

ACKNOWLEDGMENT

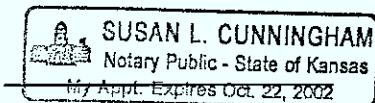
STATE OF KANSAS)
) SS:
COUNTY OF SHAWNEE)

BE IT REMEMBERED that on this 15th day of December, 2000, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Joan Wagnon, Mayor of the City of Topeka, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas, and Iris Walker, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officers, and said Joan Wagnon, as Mayor duly acknowledged the execution of the same to be the act of the City; and Iris Walker, as City Clerk duly acknowledged the attestation of the same for and on behalf of said City and affixed thereto the seal of the City.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed my official seal, the day and year last above written.

Susan L. Cunningham
Notary Public

My Commission Expires:



ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this 15th day of December, 2000, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Timothy W. Hickok, general partner of Hickok Master, Limited Partnership, a Kansas limited partnership and that said instrument was signed by authority of the limited partnership, and said Timothy W. Hickok, as general partner, acknowledged execution of the foregoing instrument to be the free act and deed of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Marcia L. Dormer
Notary Public

My Commission Expires:

7-28-02



EXHIBIT A

PROJECT SITE

All of the following-described real estate:

A track of land in Lot 6, Block "A" of FLEMING PLACE SUBDIVISION in the City of Topeka, Shawnee County Kansas, described as follows: Beginning at the Northeast corner of said Lot 6; thence South 01 degree 04 minutes 35 seconds West along the East line of said Lot 6, a distance of 399.48 feet; thence South 46 degrees 07 minutes 28 seconds East along said East line a distance of 462.59 feet; thence South 89 degrees 54 minutes 10 seconds East along said East line a distance of 35.00 feet; thence South 01 degrees 04 minutes 35 seconds West along said East line a distance of 298.37 feet to the South line of said Lot 6; thence North 89 degrees 45 minutes 30 seconds West along said South line a distance of 197.00 feet; thence North 09 degrees 15 minutes 30 seconds West a distance of 185.00 feet; thence North 46 degrees 13 minutes 53 seconds West a distance of 423.96 feet; thence North 14 degrees 40 minutes 25 seconds West a distance of 240.00 feet; thence North 01 degrees 04 minutes 35 seconds East a distance of 310.00 feet to the North line of said Lot 6; thence South 89 degrees 54 minutes 10 seconds East along said North line a distance of 232.54 feet to the point of beginning.

EXHIBIT B

DEFINITIONS

(See Tab Number 8)

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____

Date: _____

TO: SECURITY BANK OF KANSAS CITY, MISSION, KANSAS, AS TRUSTEE (THE "TRUSTEE") UNDER THE TRUST INDENTURE DATED AS OF DECEMBER 1, 2000, BY AND BETWEEN THE CITY OF TOPEKA, KANSAS (THE "CITY") AND THE TRUSTEE, IN CONNECTION WITH THE CITY'S MULTIFAMILY HOUSING REFUNDING REVENUE BONDS, SERIES 2000 (FLEMING COURT APARTMENTS PROJECT) (THE "BONDS"), AND THE LEASE AGREEMENT DATED AS OF DECEMBER 1, 2000 (THE "LEASE"), BY AND BETWEEN THE CITY AND HICKOK MASTER LIMITED PARTNERSHIP.

The undersigned hereby request that the following amounts be paid to the following payees for the following Costs of Issuance as defined in said Lease:

<u>Amount</u>	<u>Payee and Address</u>	<u>Description</u>
---------------	--------------------------	--------------------

We hereby state and certify that: (a) the amounts requested are or were necessary and appropriate in connection with the costs of issuance of the Bonds, have been properly incurred and are a proper charge against the Costs of Issuance Fund, and have been paid by or are justly due to the persons whose names and addresses are stated above, and have not been the basis of any previous requisition from the Costs of Issuance Fund; (b) as of this date, except for the amounts referred to above, there are no outstanding statements which are due and payable in connection with the issuance of said Bonds, which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof; and (c) no part of the several amounts paid or due as stated above has been or is being made the basis for the withdrawal of any moneys from the Costs of Issuance Fund in any previous or pending application for payment made pursuant to said Lease.

APPROVED:

CITY OF TOPEKA, KANSAS

By: _____
Title: _____

HICKOK MASTER LIMITED
PARTNERSHIP

By: _____
Title: _____



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 2, 2008

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DATE: December 16, 2008

CONTACT PERSON: David Thurbon/Bill Fiander **DOCUMENT #:** PUD08/2

SECOND PARTY/SUBJECT: Wanamaker North L.L.C. **PROJECT #:**

CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning

CIP PROJECT: No

ACTION OF COUNCIL: 12-09-08 First Reading. **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made part of the Zoning Ordinances by Section 48-1.03 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 6209, 6211, 6213 SW 10th Avenue in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District and "C-2" Commercial District ALL TO "PUD" Planned Unit Development District ("C-2" use group). Final Reading. (PUD08/2)(Council District No. 9)

(Approval would allow for hotel/retail uses and a pole sign height of 69 feet.)

POLICY ISSUE:

The request is consistent with the land use policies and principles of the Topeka Land Use and Growth Management Plan-2025.

STAFF RECOMMENDATION:

The Planning Commission recommended the request be **APPROVED** by a vote of **6-0-0** at their October 20, 2008 meeting as referenced in the attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See staff report.
- City Council options:
- **Adopt** the recommendation of the Planning Commission by Ordinance;
- **Override** the Planning Commission's recommendation by a two-thirds majority of City Council membership; or,
- **Return** such recommendation to the Planning Commission with a statement specifying the basis for City Council failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #25

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[ordinance](#)

[aerial map](#)

[zoning map](#)

[application](#)

[staff report](#)

[PC minutes 10-20-08](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 6209, 6211 and 6213 SW 10th Avenue in the City of Topeka, Kansas from "R-1 Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development District ("C-2" use group). **(PUD08/2) (Council District No. 9)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by reclassifying the following described property:

6209 SW 10th Avenue

Lot 1, Block A, K. E. N. Subdivision, in the City of Topeka, Shawnee County, Kansas.

6211 SW 10th Avenue

Part of the East half of the SE $\frac{1}{4}$ of Section 32, Township 11 South, Range 15 East of the 6th P.M., Shawnee County, Kansas, described as follows:

Beginning at a point on the north line of said SE $\frac{1}{4}$ of Section 32, which is 502.88 feet west of the NE corner thereof; thence west along said north line, 125.71 feet to a point 628.59 feet west of the NE corner of said $\frac{1}{4}$ Section; thence south 346.5 feet; thence east 125.71 feet; thence north 346.50 feet to the point of beginning.

6213 SW 10th Avenue

A part of the east $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 32, Township 11 South, Range 15 East of the 6th P.M., in the City of Topeka, Shawnee County, Kansas described as follows:

Beginning at a point on the north line of said SE $\frac{1}{4}$ of Section 32, which is 628.59 feet west of the NE corner thereof; thence west along the north line of said $\frac{1}{4}$ Section, 125.71 feet to a point which is 754.30 feet west of the NE corner thereof; thence south 346.50 feet; thence east 125.71 feet; thence north 346.50 feet to the point of beginning.

from "R-1 Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development District ("C-2" use group).

Subject to:

- 1. Use and compliance of the site in accordance with the recorded Master Planned Unit Development Plan of Wanamaker Northwest.**

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka,
_____, 2008.

William W. Bunten, Mayor

ATTEST:

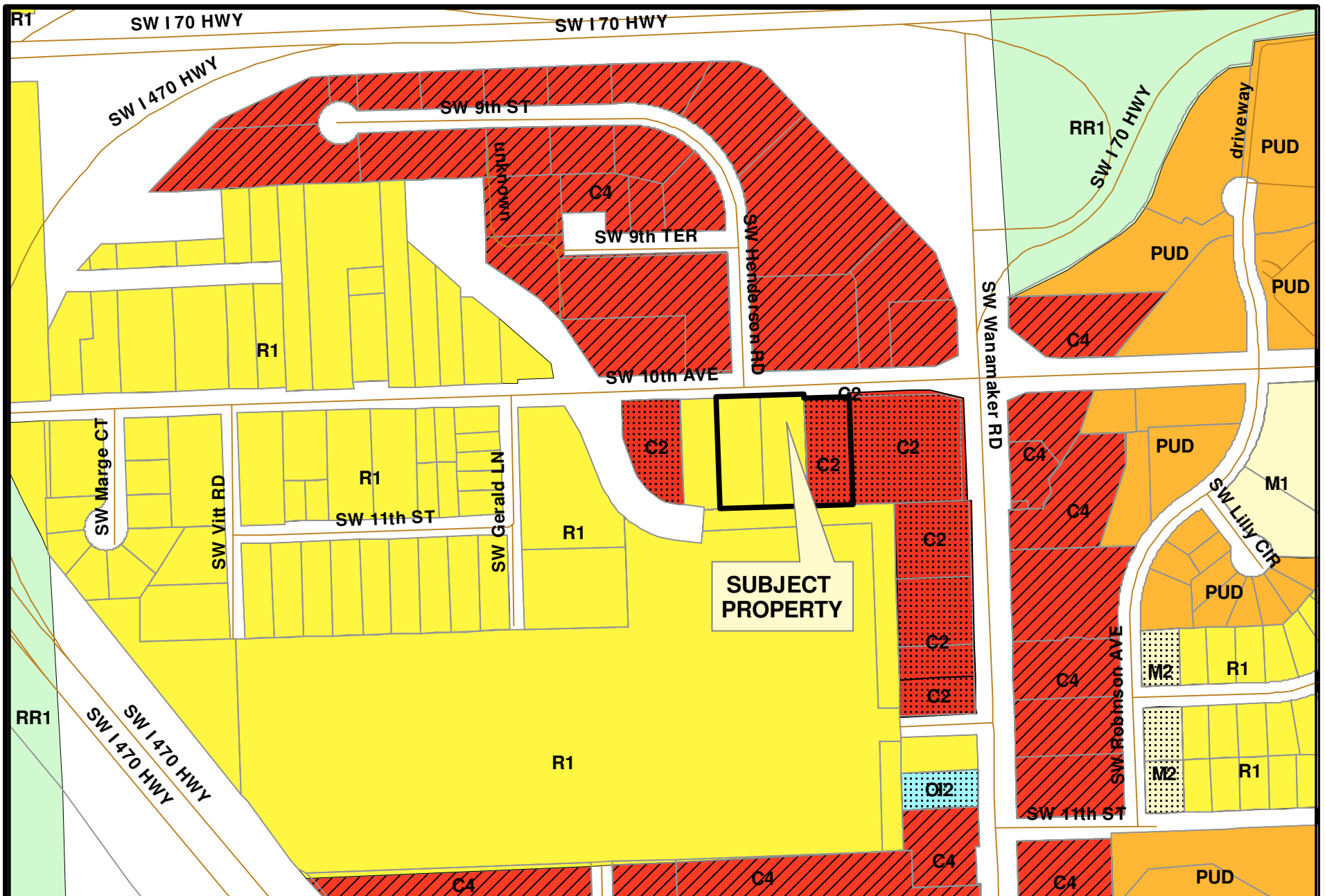
Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X



PUD08/2 Wanamaker Northwest PUD



PUD08/2 Wanamaker Northwest PUD



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): Wanamaker North, L.C.

Street Address: 3501 SW Fairlawn Road, Suite 200

City: Topeka State: KS Zip: 66614 E-mail: _____

Business phone: 785-272-1398 Home phone: _____ Fax: 785-272-1796

Authorized Owner Representative (if any): MRV, Inc., c/o Steve Johnson

Street Address: 3501 SW Fairlawn Road, Suite 200

City: Topeka State: KS Zip: 66614 E-mail: sjohnson@mrvcpanies.com

Business phone: 785-272-1398 x151 Home phone: _____ Fax: 785-272-1796

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Level 4 Engineering LLC - Mark Boyd

Street Address: 2641 SW Wanamaker Road

City: Topeka State: KS Zip: 66614 E-mail: Mark.Boyd@Level4Eng.com

Business phone: 785-228-9600 Home phone: _____ Fax: 785-228-9609

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Wanamaker North, L.C., by Jeffrey L. Ungerer, CFO/VP of MRV, Inc., Manager

Owner 1 Signature: *J. Ungerer* Date: 7/1/08

Owner 2: _____

Owner 2 Signature: _____ Date: _____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): 6209, 6211, 6213 SW 10th
Topeka, Kansas 66615

Legal Description of Property: lot(s) _____ block _____ subdivision See attached.
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 2.88 acres

Type of Application:

1. *Re-zoning from:* C-2, R-1, R-1 *to:* PUD/C-3

2. *Conditional Use Permit proposed use:* _____

Existing Use (# of dwelling units, square feet, etc.): vacant, houses and outbuildings

How long has the existing use been on the property? Not sure.

Proposed Use (# of dwelling units, square feet, etc.): anticipated 67 room hotel and approximately 7,000 square feet restaurant/retail

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? Yes *If Yes, when?* 6/27/08

FOR OFFICE USE ONLY

Date submitted: 7/3/08

Date notice sent: 7/25/08

Application no.: PUD08/2

Date advertised: 7/25/08

Filing fee: 1094⁰⁰ **Receipt no.:** 11806

Date of hearing: 8/15/08

Quarter section map no.: _____

Council district: #9

CHECK YES OR NO

Capital Plaza Area: Yes _____ No _____

Within Historic Site Environs: Yes _____ No _____

If Yes, what is it?: _____

100 yr Floodplain: Yes _____ No _____

National/State Historic Register: Yes _____ No _____

Local Historic Resource: Yes _____ No _____

Airport Hazard Area: Yes _____ No _____

Neighborhood Association: Yes _____ No _____

Name of N.I.A./N.A.: _____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

It is currently a mixed zoning of single family and commercial uses. The site is currently surrounded by C-2, C-4 and PUD zoning. The area to the south is zoned R1 but will be changed to some type of commercial zoning in the future. Commercial zoning under a PUD provides the highest and best use of this property and is compatible with other land use in the area.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

The proposed development is in keeping with similar development in the immediate area and continues to maintain the commercial development levels in the immediate area of 10th and Wanamaker. The existing housing in poor condition will be replaced with area compatible commercial development.

3. How does this request relate to any adopted neighborhood/land use plans by the City?

There is no existing neighborhood plan.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:

12" water main on the north side of 10th St.

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes.

- c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

- a. Location and size of sewer main serving site:

8" sewer main on the north side of 10th St.

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes.

- c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

- a. How will storm water run-off be handled on site?

It will be conveyed in a private storm sewer system.

- b. Does the current storm sewer system have adequate capacity for proposed use?

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

Yes, 10th Street is 26'.

- b. What are the site's existing or proposed access points?

- c. Will any street improvements or traffic control improvements be required?

No.

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ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: PUD08/2 Wanamaker Northwest

by: Wanamaker North L.L.C.

PROPOSAL: Zone change request from “C-2” Commercial District and “R-1” Single-Family Dwelling District **ALL TO** “PUD” Planned Unit Development (C-2 use group).

LOCATION: 6209, 6211, 6213 SW 10th Avenue

PARCEL ID NUMBER: 0993204001002000, 0993204001003000, and 0993204001004000

PRESENT USE: Vacant parcels and an unoccupied single-family residence on 2.88 acres

PROPOSED USE: As currently proposed, Lot 1 will contain a 3-story hotel with a maximum ground floor area of 13,250 sq. ft. Lot 2 will contain a one-story commercial/retail building with a maximum floor area of 12,000 sq. ft. The PUD is required to allow for a pole sign height greater than 35’ and to allow signage for Lot 1 located on Lot 2.

CHARACTER OF NEIGHBORHOOD: The subject property is located upon a minor arterial (SW 10th Avenue), on the west side of the Wanamaker commercial corridor, in an area that is changing from single-family to commercial. A large vacant tract (31 acres) lies to the south of the subject property. A stream running from the northwest to the southeast separates this property from this vacant tract and a single-family neighborhood to the west.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

ZONING CLASSIFICATION		PRESENT LAND USE
North:	“C-4” Commercial District	Restaurant
South:	“R-1” Single-Family Dwelling District	Vacant
East:	“C-2” Commercial District	Gas station/convenience store
West:	“R-1” Single-Family Dwelling District “C-2” Commercial District	Single-family residence Single-family residence/plumbing business

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The properties 6211 and 6213 SW 10th have remained zoned for single-family residential purposes since prior to their annexation in the 1980s

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Agenda Item # G-10a

and were built in the 1950s. The residence at 6209 SW 10th was built in 1970 and has remained commercial for some time. The residences at 6209 and 6211 have already been demolished.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The subject property is no longer suitable for single-family residential uses. The properties north of SW 10th have developed for commercial uses (restaurants and hotels). A mixed use residence/plumbing business is located west of these properties, which was zoned “C-2” in 1976. Since the subject properties are adjacent to and across from commercial properties, they are probably no longer at a desirable location for new single-family residences. However, each property by itself is too small for a commercial use to be viable because of stream buffer, landscaping, parking, and access management requirements. They will function better as an integrated commercial development.

CONFORMANCE TO COMPREHENSIVE PLAN: The Topeka Land Use and Growth Management Plan – 2025 establishes this area for *Commercial/Office* land uses, but also indicates that there should be transitional area between single-family residential and commercial land uses. The existing stream to the west would provide a natural stream buffer for the single-family residential neighborhood. Commercial rezonings west of the stream would breach that natural stream buffer and possibly disrupt the integrity of the single-family neighborhood along SW 10th.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The applicant has proposed a 75’ pole sign, which may affect nearby commercial properties by allowing a greater pole sign height than what is currently allowed on similar zoned or even less restrictive commercial zoning. The C-2 District permits pole signs of no greater than 35’. This PUD proposes a pole sign even higher than what is permitted in the C-4 District (maximum of 55’). This may be considered an unfair advantage by similar C-2 properties. The existing C-4 pole signs in the area, west of Wanamaker, have heights of 60’ (Country Inn), 50.5’ (Hooters), 54.6’ (Burger King), and 56.5’ (Clubhouse Inn) measured from the top of the sign to their elevation. The existing 73’ tall Phillip’s 66 sign in the area is grandfathered in under its current zoning. The elevations of these signs, measured from the top of the sign, range from 976’ to 987’ for an average of 55.4’. This would equal a 65’ tall sign on the subject property since it sits at a lower elevation than the other properties. Based on a visual inspection (i.e. a sign hoisted by a crane), staff believes the property at minimum needs a 65’ tall sign for full interstate visibility.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER’S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The gain to the public health, safety and welfare by not allowing the higher pole sign would be to reduce visual clutter along SW 10th. Currently, pole signs along SW 10th are setback from street frontages, which reduces their visibility from the street. The hardship imposed upon the individual landowner would be the decreased window of opportunity for interstate visibility. However, visual clutter and safety along 10th may be negatively impacted if the properties are permitted two 200 sq. ft. signs at 35’ or lower that would be allowed under straight C-2 zoning. Therefore, the trade-off of not having an additional pole sign in exchange for a taller pole sign at reduced square footage may ultimately reduce visual clutter along SW 10th more than the C-2 “by-right” alternative. As another trade-off, the PUD proposes two 5’ tall, 50 sq. ft. monument signs, which is smaller than surrounding monument signs and smaller than that permitted under the base zoning.

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AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will be extended at developer expense.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS: The PUD indicates the required parking for commercial/retail uses on Lot 2 will be met at 1 per 200 sq. ft. of floor area. Parking requirements should be revised to state that Lot 2 will also meet parking requirements for a family dining restaurant at 1 per 150 sq. ft. of floor area or 1/3 the occupant load.

Minimum Lot Area: 1 acre

Setbacks: 30' perimeter building setback- The applicant has requested a variance to reduce the setbacks on Lot 1 to 20' on the west side and 18' on the north side due to stream buffer and landscape parking lot buffer requirements. The PUD proposes a 30" landscape berm along SW 10th Street to mitigate effects of the reduced landscape parking lot buffer.

Platting: Lots 1 and 2, Block A, Wanamaker Northwest Subdivision is proposed in conjunction with this application

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request was submitted to all applicable reviewing agency staff for consideration and comment. City Water Pollution Control has granted a variance to the stream buffer ordinance to reduce the required width, as shown on the PUD plan. SW 10th, between I-470 and Wanamaker, currently carries more than 10,000 vehicles per day, which is nearing its capacity as a two-lane arterial. Recommendations provided in the Traffic Impact Analysis indicated the owners should agree to a benefit district for the future improvement of SW 10th Avenue and should allow for cross access with the unplatted property to the west. Due to the limited length of frontage for these properties, the City Traffic Engineer has indicated they should have one combined access point. It is not possible that the properties could have two access points and still meet the 300' driveway spacing requirement that is required by City Street Design Criteria. Staff cannot find any justification to allow more than one access point particularly on an undersized 2-lane arterial so close to the region's major commercial traffic corridor that will continue to experience future growth.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: N/A
2. Capitol Area Plaza Authority: N/A
3. Flood Hazard Area: N/A
4. Airport Hazard Area: N/A
5. Historic Properties: There are no National Register properties within 500 ft. .

STAFF RECOMMENDATION: Based upon the above findings and analysis, the planning staff recommends **APPROVAL** of this proposal, subject to:

1. Use and development of the site in accordance with the Master Planned Unit Development Plan for Wanamaker Northwest.

October 20, 2008
Agenda Item # G-10a

2. "The Topeka Planning Commission hereby grants a variance to Section 48-24.02(b)(2)a of the Comprehensive Zoning Regulations to reduce the perimeter building setback from 30' to 20' along the west property line of Lot 1 and from 30' to 18' along the north property line of Lot 1."
3. Revision of Note #1 under Variances on the PUD to reflect Comment #2.
4. Revision of Note #2 under Variances on the PUD to state, "City of Topeka Water Pollution Control has granted a variance . . ."
5. Revision of Note #3 under Variances on the PUD to state, "The 18' landscape easement along SW 10th Avenue will satisfy City landscape parking lot buffer requirements."
6. Revise Note #1 under Circulation, Parking, and Traffic on the PUD to include one point of cross access will be provided with the adjacent property to the west.
7. Revision of Note #2 under Circulation, Parking, and Traffic on the PUD to state, "A maximum of two (2) access points for both Lots 1 and 2 shall be allowed along SW 10th Avenue to be determined at site plan review"
8. Addition of Note under Circulation, Parking, and Traffic on the PUD to state, "The property owners(s) agree(s) to an irrevocable waiver of objection to equitable participation in a street benefit district for their share of improvements to SW 10th Avenue."
9. Revision to sign graphic and pole sign note to indicate a maximum pole sign height of 69 feet.
10. Addition of note under Landscaping stating, "Pole sign shall be landscaped around the base of the sign to be determined at site plan review."
11. Removal of existing buildings/structures from the PUD plan.
12. Revision under commercial/retail parking requirements of Project Program to also include, ". . . Or a family dining restaurant at 1 per 150 sq. ft. of floor area or 1/3 the occupant load, which ever is less."
13. Showing drainage easements and minimum opening elevations on the PUD, as required by City Engineering.

Prepared by:
Annie Driver, Planner I

DRAFT

**Minutes of the
Topeka Planning Commission
October 20, 2008**

Wanamaker Northwest Development – Annie Driver summarized the staff report for both the zoning and subdivision discussion is for both as well. Annie informed the commission a new PUD and plat was passed out tonight and there hasn't been time for review but the applicant had verbally agreed to all conditions in the staff report.

Discussion by members:

Doug Bassett asked if staff agreed with the plat and PUD the applicant's representative presented tonight? Mrs. Driver replied as far as she could see they revised both in accordance with conditions in the staff reports.

Doug Bassett asked for explanation of the sign allowed? Mrs. Driver stated the Phillips 66 sign is grandfathered in and is taller than all signs in the area. It has been there since before the property was in the city. Mr. Bassett said your study included a crane? Mrs. Driver replied yes. She stated she went out with the applicant to see how high the sign would need to be to still have view from the interstate. It was set at 70 feet.

Proponents:

Dan Cook, Level 4 Engineering, stated they agree with the staff reports. He said the revisions passed out were based off of the staff report for the PUD and plat.

- a. **PUD08/2 Wanamaker Northwest PUD** by Wanamaker North LC requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development District (C-3" use group) on property located at 6209, 6211 and 6213 SW 10th Avenue. **(Driver)**

Exparte communications - none

Jim Brown moved approval as written by staff, seconded by John Federico. **APPROVAL. (6-0-0) Mark Boyd was out of the room.**

- b. **Wanamaker Northwest Subdivision (Preliminary Plat Phase)(P08/24)** by Wanamaker North LC on property located at 6209, 6211 and 6213 SW 10th Avenue. **(Driver)**

Jim Brown moved approval as written by staff and adding the same note to the plat as the PUD regarding street benefit district, seconded by Federico. **APPROVAL. (6-0-0) Mark Boyd was out of the room.**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 2, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: David Thurbon, AICP **DOCUMENT #:**
SECOND PARTY/SUBJECT: Curtis Cemetery **PROJECT #:** HL08/04
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 007 Zoning
CIP PROJECT: No
ACTION OF COUNCIL: 12-09-08 First Reading. **JOURNAL #:**
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “OS-1” Open Space District and located at 1638 NW Harrison Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **Final Reading.** (HL08/04) (Council District No. 2)

(Approval would add historic landmark overlay zoning to the Curtis Cemetery.)

POLICY ISSUE:

Approval of the request will reinforce the goals and objectives of the Comprehensive Plan including the Neighborhood Element, Topeka-Shawnee County Historic Preservation Plan, and the Historic North Topeka Revitalization Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of 7-0-0 at their November 17, 2008 meeting as referenced in the attached minutes. The Topeka Landmarks Commission considered this request on October 16, 2008, and recommended that it be **APPROVED** by a vote of 7-0-0. Planning Department Staff recommended that this request be **APPROVED**.

BACKGROUND:

- See attached staff report
- City Council Options:
 - **Adopt** the recommendation of the Planning Commission by Ordinance;
 - **Override** the Planning Commission’s recommendation by a two-thirds majority vote (6 votes) of the City Council membership; or
 - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council’s failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

Item #26

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Staff Report](#)

[Aerial Photo](#)

[Zoning Map](#)

[Photos](#)

[Ordinance](#)

[Application](#)

[Application 2](#)

November 17, 2008
Agenda Item F.1

Presented to the Topeka Landmarks Commission: October 16, 2008

HISTORIC LANDMARKS REPORT

TOPEKA PLANNING DEPARTMENT

CASE NO: HL08/04

by: Curtis Cemetery/ NOTOMA

PROPOSAL: Requesting to amend the District Zoning Classification by granting the “HL” Historic Landmark Overlay District to property currently zoned “OS-1” Open Space District and located at 1638 NW Harrison Street in the City of Topeka, Kansas.

HISTORICAL SIGNIFICANCE: The subject property is located at the northern terminus of NW Harrison Street and is the cemetery containing the graves of several family members of Charles Curtis. Born in Topeka on January 25, 1860, Charles Curtis was a great-grandson of a Kanza Indian Chief. His mother, Ellen Pappan was the daughter of one of the Pappan Brothers who established the earliest ferry crossing across the Kansas River at Topeka. She died when Charles was three years of age. Following his mother’s death, Charles was raised by his maternal grandparents on the Kaw Indian Reservation near Council Grove, Kansas.

Charles Curtis served in the U. S. House of Representatives from 1893 to 1907. He was elected Senator in 1906 and served from 1907-1913, and again from 1915 to 1929. In 1928, Charles Curtis was selected by Herbert Hoover to serve as his Vice Presidential running mate, and in 1929, became the first Native American to hold the office, the first Vice President from west of the Mississippi River, and the first Vice President from the state of Kansas. He served one term as Vice President, from 1929 until 1933. Charles Curtis died, February 8, 1936 in Washington D.C. and was buried in the Topeka Cemetery.

While Charles Curtis is not buried in this family cemetery in North Topeka, several of his family members are, the earliest being William Curtis and his son, Ira dating to 1873. Recent damage to the grave markers and headstones has rendered most of the family names unreadable.

ANALYSIS: This subject property qualifies for Landmark designation by virtue of the following factors:

- 1) The property is more than 50 years old;
- 2) The property is associated with a significant person or group of persons who have made a significant contribution to the history and development of Topeka, Shawnee County, the State of Kansas, and the Nation;
- 3) The property is associated with events that have made a significant contribution to the broad pattern of history within the City of Topeka; and

- 4) The property is likely to yield information important in the history or prehistory of the City of Topeka, Shawnee County, and the State of Kansas.

STAFF SUMMARY: The applicant seeks authorization to designate the property as a local historic landmark. Local landmark designation is strictly voluntary and requires the recipient to maintain their property in accordance with certain historic standards and prevent them from deteriorating. This designation does not impose any restrictions or limitations on adjoining properties. Principally, landmark designation is a matter of pride to the property owner and demonstrates a commitment to historic preservation.

The applicant has sufficiently satisfied the requirements of the local landmark designation process as set out by Shawnee County Resolution No. 98-206 and City of Topeka Ordinance No. 17292.

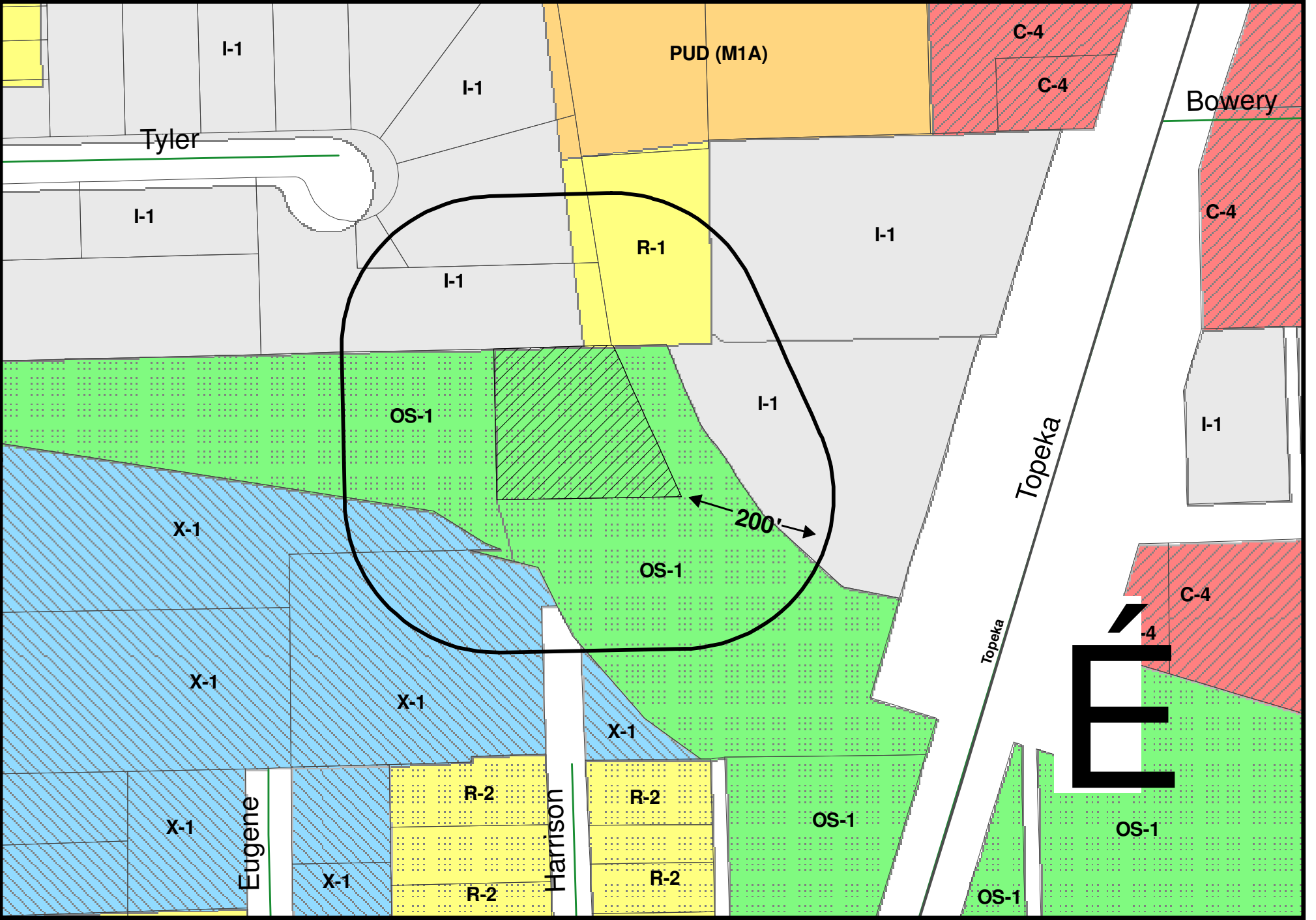
RECOMENDATION: The Topeka Landmarks Commission considered this proposal at their October 16, 2008 meeting. At that time, the Commission recommended **APPROVAL** of the proposal by a vote of 7-0-0.

Therefore, the Planning Staff Recommends **APPROVAL** of this proposal.

Prepared by: Timothy Paris
Planner II



HL08/04 Curtis Family Cemetery/NOTOMA





Curtis Family Cemetery

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr. designating real property more specifically described herein as a historic landmark and presently zoned "OS-1" Open Space District and located at 1638 NW Harrison Street (Curtis Cemetery) in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4. **(HL08/4)**
(Council District No. 2)

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by designating the "HL" Historic Landmark Overlay zoning to property zoned "OS-1" Open Space District and described as follows:

Commencing at a point on the North line of Reserve No. 4, Kaw Half Breed Lands in the City of Topeka, Shawnee County, Kansas, that is 21.60 chains east of the Northwest corner of said Reserve; thence south 3.00 chains; thence east 2.45 chins to top of West bank of Soldier Creek and continuing east to the Center of said creek; thence up the Center line of said Soldier Creek to a point where the North line of Reserve No. 4 intersects said last line; thence west along the said North line to the place of beginning. Containing 9/10 of an acre, more or less.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

Section 4. This Ordinance shall be recorded with the Shawnee County Register of Deeds Office.

PASSED AND APPROVED by the Council of the City of Topeka, _____,
2008.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

**NOMINATION FOR HISTORIC LANDMARK DESIGNATION
INDIVIDUAL PROPERTY INVENTORY FORM**

I (We) hereby nominate the following described property to become designated as HISTORIC LANDMARK, as established by City of Topeka Ordinance No. 18420 on April 19, 2005.

1. Location / Address: 000 NW Tyler St
2. Owner(s): Caretakers: "NotamA: "North Topeka on The Move"
3. Address of Owner (if different): Po Box 8264
Topeka KS 66608
4. Telephone number for Owner: _____
Daytime _____ Evening _____
5. Real Estate Tax Identification Number: 1041904006001000
6. a. Approximate date of (original) construction: pre 1873
- b. Approximate date(s) of major alterations, if known: _____
7. Builder and/or architect, if known: 0
8. Architectural Style: Native Indians
9. Primary building materials: Some stones made of cement
after 1903 Flood-
10. Comments: This Cemetery part of Indian 1/2 Breed lands
Est 1825 by US Congress: William Curtis was owner
of property - Jan 1873 when his son died &
Buried there.

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

11. In the designation of buildings, structures and objects as historic landmarks, certain criteria must be met. The property normally must be 50 or more years old. In addition, the historic resources must meet one or more of the following criteria.

Please indicate the category under which you are submitting this property for designation.
(Check all that apply.)

- A. Property is fifty (50) years old or older, and meets one or more of the following criteria:

- ☒ a. Property is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state, or nation.
- ☒ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
- ☐ c. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction.
- ☒ d. Yields or is likely to yield information important in prehistory or history.
- ☐ e. Possesses integrity of location, design setting, materials and workmanship.

- B. Properties less than fifty (50) years old may be eligible provided that they are of extreme historical significance. All other criteria listed above also apply.

☐ If your nomination is based upon this provision, please check at left and attach supporting information.

12. Attach to this nomination inventory form the following supportive documents:

- A. Copy of the last deed filed for record in the office of the Register of Deeds of Shawnee County, Kansas.
- B. Photographs, at least one each of the front, rear, and each side.
- C. Additional information to describe historical significance (optional).

this tax notice is the only interestment to the property to date.

KSHS - Research into AR 3893 - Numerical Index - Indian Reserve Lands Vol 1860-1910 No Deed for Cemetery. Est before Deeds office

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

DECLARATION

I (We), the owner(s) of the property described herein request that the Topeka Landmarks Commission designate the above described property to be a parcel within a historic district as established by ordinance.

OWNER

Signature:

Gary L. Slomson

Print Name:

Gary L. Slomson

Date:

9-2-08

OWNER

Signature: _____

Print Name: _____

Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

**NOMINATION FOR HISTORIC LANDMARK DESIGNATION
INDIVIDUAL PROPERTY INVENTORY FORM**

I (We) hereby nominate the following described property to become designated as HISTORIC LANDMARK, as established by City of Topeka Ordinance No. 18420 on April 19, 2005.

1. Location / Address: 000 NW Tyler St
2. Owner(s): care take - Ann M Andrews
3. Address of Owner (if different): PO Box 1516
Topeka, Ks 66601
(785) 235-1004
4. Telephone number for Owner: 235-1004 817-8545
Daytime Evening
5. Real Estate Tax Identification Number: 104-1904006-001000
6. a. Approximate date of (original) construction: pre 1873
b. Approximate date(s) of major alterations, if known: 1903-flood, 1951-flood
7. Builder and/or architect, if known: not known
8. Architectural Style: Native Land
9. Primary building materials: Stones of concrete after 1951 flood
some stones original marble
10. Comments: This Cemetery part of half breed lands established
1825 by US Congress, land sold by Julie Bonville Peppan
to William Curtis, founder of Eugene (N Topeka)
when his youngest son died, both are buried there,
as well as 2 Civil War Veterans, son + son-in-law
of William Curtis, 1 veteran is father to Vice-
President Charles Curtis (buried in Topeka Cemetery)

Topeka Landmarks Commission

620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

11. In the designation of buildings, structures and objects as historic landmarks, certain criteria must be met. The property normally must be 50 or more years old. In addition, the historic resources must meet one or more of the following criteria.

Please indicate the category under which you are submitting this property for designation.
(Check all that apply.)

- A. Property is fifty (50) years old or older, and meets one or more of the following criteria:

- ☒ a. Property is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state, or nation.
- ☒ b. Property is associated with a significant person or group of persons in the history of the city, county, state, or nation.
- ☐ c. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction.
- ☒ d. Yields or is likely to yield information important in prehistory or history.
- ☐ e. Possesses integrity of location, design setting, materials and workmanship.

- B. Properties less than fifty (50) years old may be eligible provided that they are of extreme historical significance. All other criteria listed above also apply.

☐ If your nomination is based upon this provision, please check at left and attach supporting information.

12. Attach to this nomination inventory form the following supportive documents:

- A. Copy of the last deed filed for record in the office of the Register of Deeds of Shawnee County, Kansas.
- B. Photographs, at least one each of the front, rear, and each side.
- C. Additional information to describe historical significance (optional).

KSHS - Research into AR 3893
Numerical Index - Indian Reserve lands
Vol 1860-1910
No Deed for Cemetery. Original Survey for
William Curtis, Aug 1880
William Curtis - founder of North Topeka
grand father to Vice President Charles Curtis
www.vpcharlescurtis.net

Topeka Landmarks Commission
620 SE Madison Street, 3rd Floor ~ Topeka, Kansas 66607
(785) 368-3728

DECLARATION

I (We), the owner(s) of the property described herein request that the Topeka Landmarks Commission designate the above described property to be a parcel within a historic district as established by ordinance.

OWNER	Caretaker	OWNER
Signature:	<u>Ann M Andrews</u>	Signature: _____
Print Name:	<u>Ann M Andrews</u>	Print Name: _____
Date:	<u>12/9/2008</u>	Date: _____

RETURN THIS FORM AND REQUESTED SUPPORTIVE DOCUMENTATION TO:

Topeka Planning Department
Landmarks Commission
620 SE Madison Street, 3rd Floor
Topeka, KS 66607-1118

QUESTIONS? Call: (785) 368-3728 Fax: (785) 368-2535



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 11, 2008

+ Back Print

DATE:	December 16, 2008		
CONTACT PERSON:	David Thurbon / Bill Fiander	DOCUMENT #:	N/A
SECOND PARTY/SUBJECT:	Temple of Deliverance Church	PROJECT #:	PUD08/5
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 007 Zoning		
CIP PROJECT:	No		
ACTION OF COUNCIL:	JOURNAL #: PAGE #:		

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at southeast corner of SE Adams and SE 21st Street from “R-1 Single Family Dwelling District and “C-2” Commercial District ALL TO “PUD” Planned Unit Development District (“M-2” use group).
Final Reading. (PUD08/5) (Council District No. 4)

(Approval would allow development of 49 dwelling units for affordable housing on a 3.98 acre property.)

POLICY ISSUE:

Considering the site’s location at the intersection of two completed arterial streets on the periphery of the neighborhood, the proposal is consistent with the neighborhood model of the Comprehensive Plan. The proposal will not increase traffic upon existing local streets and will have existing forested areas to shield the development from adjacent properties.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of 5-2-0 at their November 17, 2008 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

See attached staff report.
City Council Options Include:

- (1) Adopt the recommendation of the Planning Commission to approve by a three-fourths majority (**7 votes of the City Council membership**) Item #27
- (2) Override the Planning Commission's recommendation by a two-thirds majority (6 votes of the City Council membership)

(3) Return such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[Aerial](#)

[Zoning](#)

[Application](#)

[Staff Report](#)

[Plan Layout 1](#)

[Plan Layout 2](#)

[Planning Commission Minutes](#)

[Informal Protest Petitions](#)

[Protest Memo](#)

[Protest Petitions](#)

[Protest Map](#)

[Protest Computations](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at southeast corner of SE Adams and SE 21st Street from "R-1 Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development District ("M-2" use group). **(PUD08/5) (Council District No. 4)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by reclassifying the following described property:

Tract I:

A tract of land in the NW ¼ of Section 8, Township 12 south, Range 16, East of the 6th P.M., in the City of Topeka, Shawnee County, Kansas, described as follows:

Beginning at a point on the north line of the NW ¼ of said Section 8, Township 12 south, Range 16 which is 564 feet east of the NW corner of said ¼ Section, at the intersection of an alley and 21st Street;

Thence south parallel with the west line of said NW ¼, 433.6 feet;

Thence west parallel with the north line of said NW ¼, 190.4 feet;

Thence north parallel with the west line of said NW ¼, 178 feet;

Thence west parallel with the north line of said NW ¼, 118 feet, more or less, to the East line of a 1 ½ acre tract in square form in the NW corner of said NW ¼; thence north along the east line of said 1 ½ acres tract 255.6 feet, more or less, to the north line of said NW 1/4 ; thence east along said north line to the place of beginning, EXCEPT that part taken by condemnation as set forth in District Court Case No. 122,881.

Tract II:

1 ½ acres in a square form in the NW corner of the NW ¼ of Section 8, Township 12 South, Range 16, East of the 6th P.M., in the City of Topeka, Shawnee County Kansas, EXCEPT that part now platted in Jefferson Square Subdivision No. 2; AND EXCEPT that part taken by condemnation as set forth in District Court Case No. 122,881.

Tract III:

Lots 3 & 4, Block A, Jefferson Square Subdivision #2, commonly known as 2132 SE Adams Street, in the City of Topeka, Shawnee County, Kansas.

from "R-1 Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit

Development District ("M-2" use group). **Subject to:**

1. **Use and compliance of the site in accordance with the recorded Master Planned Unit Development Plan of Pioneer Adams II, L.P.**

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka,
_____, 2008.

William W. Bunten, Mayor

ATTEST:

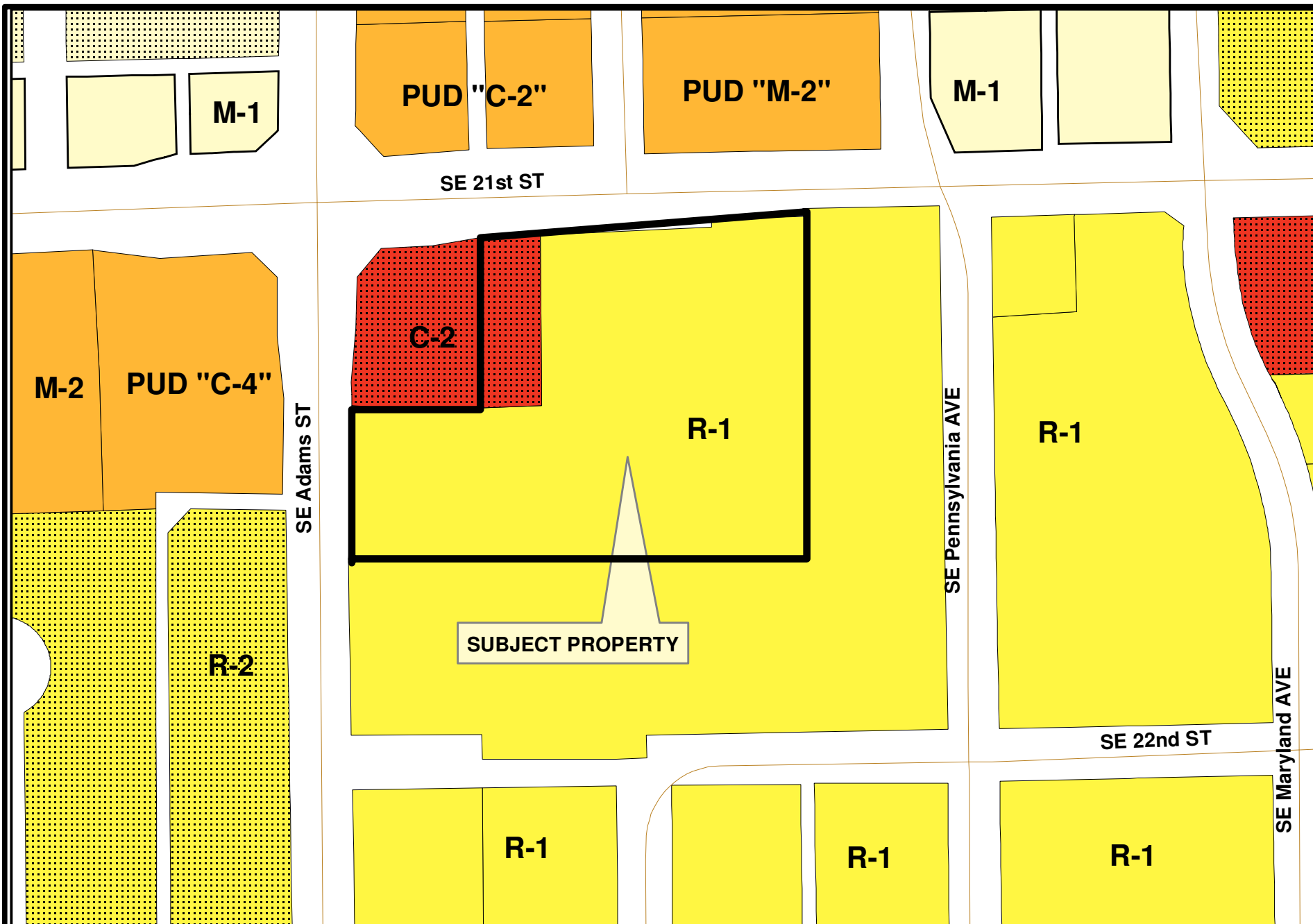
Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified X



PUD 08/5 by Temple of Deliverance Church



PUD 08/5 by Temple of Deliverance Church



Application Form Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): TEMPLE OF DELIVERENCE CHURCH (W.O. SHEPPARD)
DAN H. OLIVER

Street Address: 520 S.E. NORWOOD 1800 S.W. JAMES

City: TOPEKA State: KS Zip: _____ E-mail: _____

Business phone: 608-7358 Home phone: _____ Fax: _____

Authorized Owner Representative (if any): ROSS FREEMAN, PIONEER GROUP

Street Address: 1200 S. KANSAS AVE

City: TOPEKA State: KS Zip: 66612 E-mail: ROSSPGI@MSN.COM

Business phone: 232-1122 Home phone: 272-6254 Fax: 232-1660

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

ARCHITECT ONE, P.A.

Street Address: 3500 S.W. FAIRLAWN RD #100

City: TOPEKA State: KS Zip: 66614 E-mail: mtwe architect one pa. com

Business phone: 271-7010 Home phone: 271-8494 Fax: 271-7020

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: TEMPLE OF DELIVERENCE CHURCH

Owner 1 Signature: W.O. Sheppard Date: 10/1/08

Owner 2: Dan H. Oliver Sr.

Owner 2 Signature: Dan H. Oliver Sr. by SS Date: 10/1/08

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): _____

SOUTHEAST OF 21ST & ADAMS - EXCLUDING 2 HOMES ON CORNER

Legal Description of Property: lot(s) 3 & 4 block A subdivision JEFFERSON SQUARE
(if unplatted, attach metes and bounds description) AND FURTHERMORE AS PER THE SUP #2 ATTACHED LEGAL DESCRIPTIONS

Total Area (acres/square feet): 171,097 S.F. ±

Type of Application:

1. Re-zoning from: R-1 to: PUD w/ M-1 USE GROUP

2. Conditional Use Permit proposed use: _____

Existing Use (# of dwelling units, square feet, etc.): 1 RESIDENCE, 1,000 S.F.

How long has the existing use been on the property? 70 YEARS ±

Proposed Use (# of dwelling units, square feet, etc.): 49 UNITS

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? YES If Yes, when? 6/19/08

FOR OFFICE USE ONLY

Date submitted: 10/3/08

Date notice sent: 10/24/08

Application no.: PUD08/5

Date advertised: 10/24/08

Filing fee: 1150⁰⁰ Receipt no.: 11842

Date of hearing: 11/17/08

Quarter section map no.: _____

Council district: #4

CHECK YES OR NO

Capital Plaza Area: Yes _____ No _____

Within Historic Site Environs: Yes _____ No _____

If Yes, what is it?: _____

100 yr Floodplain: Yes _____ No _____

National/State Historic Register: Yes _____ No _____

Local Historic Resource: Yes _____ No _____

Airport Hazard Area: Yes _____ No _____

Neighborhood Association: Yes _____ No _____

Name of N.I.A./N.A.: _____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. Why is the land not suitable for the uses to which the property is currently zoned?

PROPERTY HAS NOT BEEN DEVELOPED AND
RESTS ON A MAJOR INTERSECTION IN AN
AREA OF TOWN NEEDING AFFORDABLE HOUSING.

2. What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?

- PROJECT WILL SUBSTANTIALLY BE SIMILAR TO
APARTMENT/TOWN HOME PROJECT TO THE NORTH.
- BRING NEW LIFE TO UNDEVELOPED GROUND
& REMOVE OLDER HOME & OUT BUILDINGS

3. How does this request relate to any adopted neighborhood/land use plans by the City?

NO ADOPTED PLAN FOR THIS AREA.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

- a. Location and size of water main serving site:

8" WATER MAIN ON 21ST ST. & ADAMS

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

YES

- c. If other than City of Topeka, identify water district provider: _____

2. Sanitary Sewer

- a. Location and size of sewer main serving site:

(2) 8" LINES RUN N/S THROUGH SITE

- b. Does the current system have adequate capacity? If not, are improvements anticipated?

YES

- c. If other than City of Topeka, identify sewer district provider: _____

3. Storm Drainage

- a. How will storm water run-off be handled on site?

COMBINATION OF SURFACE & U.GROUND SYSTEM
W/ ON-SITE RETENTION IF REQUIRED.

- b. Does the current storm sewer system have adequate capacity for proposed use?

T.A.D. - WILL PROVIDE RETENTION SYSTEM
IF REQUIRED.

4. Traffic Circulation

- a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

YES ADAMS - 50' WIDE
21ST - 60' WIDE

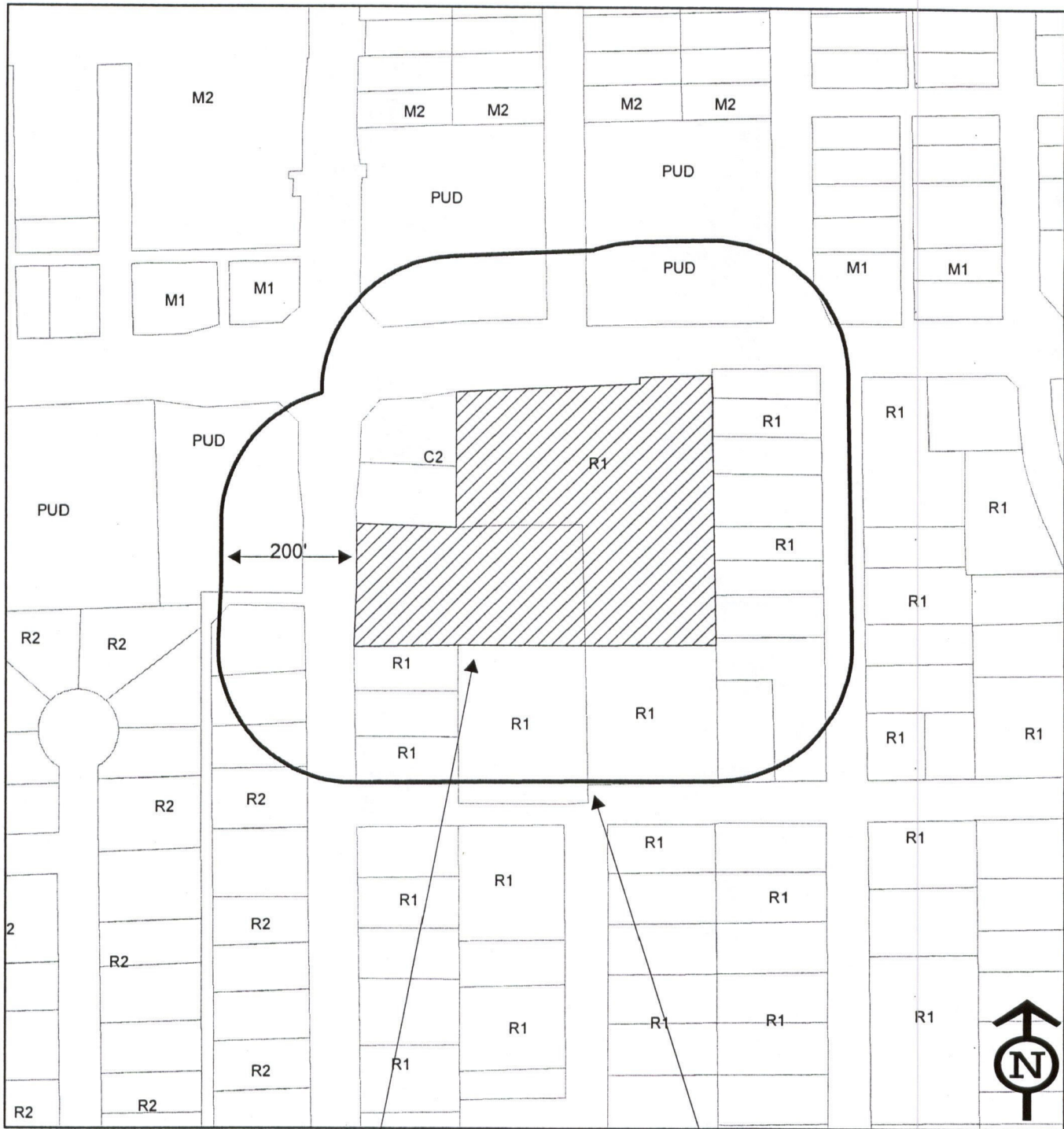
- b. What are the site's existing or proposed access points?

PROPOSED ACCESS - ONE DRIVE EACH FROM
21ST & ADAMS

- c. Will any street improvements or traffic control improvements be required?

REQUEST SHORTENING OF SOUTH END OF
ISLAND ON ADAMS, SOUTH OF 21ST ST.

PUD08/5 by Pioneer Adams II, L.P.



Requested Area

Notification Area

PUD08/5 Pioneer Adams II, L.P. by Temple of Deliverance Church, Gerald L/Marion N. Halbett and Dan Oliver, Sr. requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District TO "PUD" Planned Unit Development ("M-2" Multiple Family Dwelling District use group) on property located at the southeast corner of SE Adams and SE 21st Street.

November 17, 2008
Agenda Item # F-2

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: **PUD 08/5 Pioneer Adams II**

by: **Temple of Deliverance Church**

PROPOSAL: Zone change from “R-1” Single Family Dwelling District and “C-2” Commercial District ALL TO “PUD” Planned Unit Development District (M-2 use group).

LOCATION: On property located at the southeast corner of SE 21st Street and SE Adams Street.

PARCEL ID NUMBER: 1330802006002000, 1330802006006000.

PRESENT USE: A total of 3.98 acres of property on two separate parcels. 0.63 acres of the parcel with frontage along SE Adams Street (1330802006006000) has been divided into two lots, with one single-family unit facing Adams St. upon the south lot. The remaining 1.09 acres of this parcel is vacant. The parcel with frontage along SE 21st Street (1330802006002000) is vacant and has a total of 2.6 acres in area.

PROPOSED USE: The plan proposes a mix of multiple-family apartment buildings and duplexes for a total of 49 living units using the tax credit program.

CHARACTER OF NEIGHBORHOOD: The subject property is located within a single-family residential area near the intersection of two arterial streets, with frontage along each street. While there is commercial zoning on the southeast, southwest and northeast corner of the intersection, there are no present commercial uses at this location. The two homes adjacent to the subject property are zoned for commercial, but are used for residential purposes. With the exception of a single-family home on the west side of the subject property, the remainder of the area is unimproved and rather forested.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	PUD with “M-2” Multiple-Family Dwelling; “C-2” Commercial District	Multiple-Family Apartment Units; Vacant
South:	“R-1” Single-Family Dwelling District	Single-Family Residences
East:	“R-1” Single-Family Dwelling District	Single-Family Residences
West:	“C-4” Commercial District; “R-1” Single-Family Dwelling District	Vacant; Single-Family Residence

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LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The property has been classified for *Single-Family Residential* ever since zoning was established for the area, although a small portion of parcel 1330802006002000 was re-zoned for *Commercial* in 1964. A house was built along SE Adams Street around 1910, while the rest of the property has remained vacant, including the portion zoned for *Commercial*.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: While single-family residential is the primary development pattern in the area, the site is potentially more suitable for higher-intensity land uses due to its proximity to the intersection of two arterial streets, as well as the presence of commercial zoning at this intersection as well. Since the site will require significant improvements in order to build upon, such as the construction of right-of-way and utility lines, further single-family development upon this site may no longer be the most cost-effective alternative, nor will it be the most efficient use of land for such a small amount of property.

CONFORMANCE TO COMPREHENSIVE PLAN: As designated by the *Future Land Use Plan – 2030*, this area is classified for *Urban/Suburban Low Density Residential* land uses. The PUD plan, however, proposes a total of 49 units on less than four acres of land for a density ratio of about 12 units / acre. This is high-density development and would not be in conformance with the Comprehensive Plan's future land use map. However, considering the site's location near an intersection of two arterial streets on the periphery of a neighborhood, the use would be consistent with the Comprehensive Plan Neighborhood Model.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The proposal should have no adverse effects upon nearby properties as the proposal will not increase traffic upon existing local streets. The project will also have adequate landscaping and existing forested areas to shield the development from adjacent properties of single-family homes.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: There will be no gain to the public by denying the request of the landowner since reclassification of the property will allow the site to develop more intensely at an appropriate infill location with infrastructure in place, thus improving the surrounding area that is in need of re-investment.

AVAILABILITY OF PUBLIC SERVICES: A water main will need to be extended into and thru the site, and easements will need to be written and granted.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS: Parking requirements have been accommodated at a ratio of 1.75 spaces per unit. There will also be on-street parking available on one side of the street. The parking provided appears sufficient for this development proposal due to its residents being less car-dependent and proximity to a public transportation route.

November 17, 2008
Agenda Item # F-2

Minimum Lot Area:

Compliant. While the use group category of the proposal is not comparable to that of the surrounding neighborhood (with the exception of the Pioneer Adams Towne Homes located across SE 21st Street), the project will not have any greater impact upon streets and utilities in the area than would conventional development and will not adversely affect the enjoyment of neighboring properties. The PUD proposal, furthermore, will allow the site to develop much more efficiently than would occur with single-family residential development.

Setbacks: **Compliant.**

Platting: The property will need to be platted into one lot as a condition of development.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request was submitted to all applicable reviewing agency staff for consideration and comment. All issues or concerns that were expressed by reviewing staff relative to code compliance or provisions of public service have been resolved or will be addressed at the building permit stage.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: Central Highland Park.
2. Flood Hazard Area: N/A.
3. Airport Hazard Area: N/A.
4. Historic Properties: N/A.

STAFF RECOMMENDATION: Staff recommends **APPROVAL** of this proposal subject to the following:

1. *Organizing PUD Notes according to administrative policies (insert headings).*

Prepared by:
Cylus Scarbrough, Planner I

NOTES:

- [illegible]

CARE & MAINTENANCE

All common open space, parking areas, drive, sidewalks, ~~at~~ ^{driveway} ~~driveway~~, etc. will be merged and maintained by the PROPERTY OWNER.

AMENDMENTS

The Planned Unit Development (PUD) Review Plan has been reviewed and approved in accordance with the provisions of Article 24 of the Comprehensive Zoning Regulations of the City of Toms River, New Jersey, Ordinance 1990-10, as amended. The terms and provisions of the plan shall extend to and be binding upon future owners, tenants, successors, assigns, and assigns of the owner. Should more than one entity hold title, the terms, conditions, covenants, and assignments of the owner, should more than one entity hold title, be then all such official records of all such title as determined by the Planning Director shall be required to include any such amendment.

Site Data

Zoning	PUD w/ M-2 Use Group
Total Site Area	171,097 SF
Total Dwelling Units	49 units
Land Use Intensity	1 unit per 3,492 SF
Garages Provided	20 spaces
Dinnertry Parking Provided	20 spaces
Standard Parking Provided	46 spaces
Total Parking Provided	86 spaces

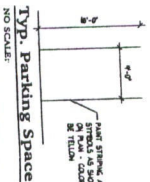
Site Plan
SCALE: 1" = 30'-0"

SCALE: 1" = 30'-0"

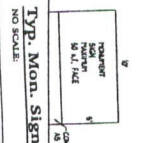
LEGEND

		(M)	(P)	
M	PANOLE	●	17' BDN P&T	
NH	WATER PETER	●	NV LS 98 CAP	
NY	WATER VALVE	●	CHELSEA CROSS SE	
PA	FIRE HYDRANT	●		
UT, R.	LEAF POLE	□	NHM POWER TRANS (SUBMIT TO CO)	
PP	POWER POLE	□	NHM CONDUIT	

Typ. Parking Space
NO SCALE



17p. 170000 5-8-80



Vicinity Map



SCALE: 1" = 30'-0"

ARCHITECT
JAMES R. HARRINGTON III, P.E. ARCHITECT 1989 / AIA-NC
10000 N. CENTRAL AVENUE SUITE 1000
DENVER, COLORADO 80231
TEL: 303.733.7300
FAX: 303.733.7300
WWW.ARCHITECTURE.COM

Plans prepared by

Pioneer Adams II, L.P.
Owners of Record
W.O. Sherrod, President
(Temple of Deliverance Church)
Dan H. Oliver, Sr.

DRAFT

**Minutes of the
Topeka Planning Commission
November 17, 2008**

PUD08/5 Pioneer Adams II, L.P. by Temple of Deliverance Church, Gerald L/Marion N. Halbett and Dan Oliver, Sr. requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District and "C-2" Commercial District **ALL TO** "PUD" Planned Unit Development ("M-2" Multiple Family Dwelling District use group) on property located at the southeast corner of SE Adams and SE 21st Street. **(Scarborough)** Cylus Scarborough summarized the staff report.

Proponents:

Ross Freeman, owner/developer of the property, spoke in favor of the proposal. He passed out a plan of the property. He said this property lies south of Pioneer Adams I. He said with the first development there were 300 names on a waiting list before it opened. There are still people on the waiting list waiting for this project also. He said this development will look the same as the first one. He said the townhomes are 1400 square feet with attached garage. They are income qualified properties and rent ranges from \$350 to \$625.

Howard Blackmon asked was it determined this project won't increase traffic? Mr. Scarborough replied the internal streets are private and access is to SE Adams and SE 21st Street. There are no local streets used to access the property. Mr. Blackmon said he is concerned with the traffic it will put onto SE Adams and SE 21st Street.

Mr. Freeman said the Pioneer Adams development is the first of its kind in this area. He said he thinks it will be good for the area.

Michelle Hoferer asked how many of these types of developments are in this neighborhood? She said isn't there one to the west of this property, across Adams? Mr. Blackmon replied, that is a senior center. Ms. Hoferer asked, what about SE 15th and Adams? Wasn't there some type of multiple family zoning approved in that area? Mr. Thurbon replied we have not seen any residential proposals for that area. The zoning is there for it but not sure what type it will be yet. Ms. Hoferer said she thinks there have been a couple of other developments approved in the Highland Park area.

Larry McDowell, 2130 SE Madison, spoke in favor of the proposal. He said he thinks this development will improve our neighborhood and he fully supports it.

Opponents:

Eric Newman, 2119 Pennsylvania, spoke in opposition to the proposal. He stated he lives within the 200 foot notification area and he is opposed to the development. He said he has lived there for 30 years and this property has always been vacant. He said it is virtually unbuildable. He said he likes the neighborhood like it is and does not want that high of density in his backyard. I don't see the gain in building this development. He said he watched as Pioneer I was being built and in his opinion it is the cheapest construction that can be built. Within 10 years they will be deteriorated and all the problems that go along with that.

Peggy Lewis, 2115 Pennsylvania, spoke in opposition to the proposal. She said the development would be in her backyard and that is a lot of people. She said the SW corner of SE 21st & Adams is vacant, maybe that would be a better location for this. She said she doesn't see this will bring anything to the neighborhood. The neighborhood is well established with generational families in the neighborhood.

Curtis Moore, 2205 Massachusetts, spoke in opposition to the proposal. He said every time it rains in this area there is flooding. Turning off of Massachusetts onto 21st Street this project will block the view. We need new streets and sidewalks in this area. Ms. Hoferer asked Mr. Moore if his property is to the south of the proposal property? Mr. Moore replied yes. He stated I am opposed to this.

Proponent:

Reverend Walter Sheppard, Temple of Deliverance Church, spoke in favor of the proposal. He said he agrees with Mr. Freeman. This property has never been developed and now we can have affordable housing for the neighborhood. The trees will be a buffer for existing homes in the area. Reverend Sheppard said Mr. Freeman will fix the water drainage problems and upgrade the neighborhood. Ms. Hoferer asked how long the church has owned this property? Reverend Sheppard replied 17 years.

Opponents:

Stephanie McCormick, 2224 SE Massachusetts, spoke in opposition to the proposal. She said this is too intense for our neighborhood. She read the district description. She said it is not a good transition from residential to multiple family. This will be a apartment complex with 100 or more people living in them. The land north of 21st Street was already zoned for multiple-family before it was built. She showed pictures of homes and properties in the area. She stated this land has never been developed. I am sure if this property went up for sale, people would have purchased and built single family homes on it. She again showed pictures and had copies of the appraisals of homes in the area. She stated these are homes that have been built in the last 10 years. She added there was no mention of the small creek in the back of this property. This project will increase storm water runoff more than single family homes. We aren't against development of this area, just the intense use. We want single family homes in this area. Ms. Hoferer asked where the new homes that were in the pictures are located at? Ms. McCormick replied SE 25th and Adams and SE 25th and Virginia.

John Federico commended Ms. McCormick in her presentation.

Yvonne May, 24th and Pennsylvania, spoke in opposition to the proposal. She said we aren't against development, just this type of development. She gave a small description of character of the neighborhood. She said this is Highland Park and it is about 160 years old. We don't have this large type of development anywhere else in Highland Park. She said many generations have lived in the area. She said the staff report states this development doesn't follow the future land plan and we agree. We agree it should be single family homes. The staff report also says it will be a deterrent to the neighborhood. The intense use of this property will bring too many people in this area. She said there will be a lot of traffic noise and car noise. It wouldn't be there with single family homes. According to City of Topeka 40% of the properties in town are rental properties. We want to see more home ownership in Topeka. We want stability in our neighborhood. Flooding will be a problem. There are many historic homes in this neighborhood. Some of which were linked to underground-railroad. She said there was also a natural spring.

Wanita Marshal, 2301 SE Massachusetts, spoke in opposition to the proposal. She said she has lived in this area for over 50 years. We have been trying to get decent wider streets in this area. I believe if we have decent streets people will come to build homes. This is not a run down neighborhood. With this multiple family you never know what will come. Ms. Hoferer asked what the first Pioneer development has done to the neighborhood? Have you noticed more traffic? Ms. Marshal replied, no really I stay at home so I don't see it. Ms. Marshall stated she thinks it would be better to have single family homes.

Jane Newman, lives in the neighborhood, spoke in opposition of the proposal. She said if this goes in it will increase our property tax. It will also increase the traffic. She said with the original development there has been a lot more traffic than there was. This development will increase the noise in my back yard. There will be lights from the buildings and the cars. It has been vacant for along time. Why not offer to single family and leave it like that.

Pat Mulryan, 2141 SE Adams, spoke in opposition to the proposal. He said he rents out this house. He said the entrance into the new development will cause a big problem. They will turn from the south off Adams into the development. They can't exit south onto Adams out of the development. We fixed up our home, we rent out for more than \$425 and I can't compete with this development. We keep the house in good shape. We do oppose this. It will bring crime and more drugs into the area. Mr. Mulryan requested a protest petition. David Thurbon explained the process to Mr. Mulryan. He said depending on the outcome from the vote here, it takes six votes of the Council to override the Planning Commission and with a full protest of 20% of land owners it takes 7. He informed Mr. Mulryan to contact the Planning Department and we will help you obtain the form.

John Federico asked what the Highland Park NIA had to say about this development? Mr. Scarbrough replied we have not heard from the NIA.

Wanita Marshal stated she is the past President of the Highland Park NIA and the current President could not be at the meeting tonight. She said he relayed to her that he is opposed to the development. She said the Vice President is also against it. Mr. Federico asked if there was an official vote taken? Mr. Thurbon said he is not sure if there was an official vote or just opposition by property owners.

Mr. Freeman, owner/developer, said he had met with the NIA regarding this development. He said at the time there was no opposition. We contacted the President of the Highland Park NIA again to attend the November meeting and they were having a dinner meeting so we didn't get to go. All of the meetings with the current

President have been positive and he has never shown opposition.

Jim Brown said there seems to be a lot of conversation about run off? Mr. Freeman said there is a detention pond located in the NW corner of the development. On the plan it is stated about runoff retention. Mr. Brown asked if there will be any additional underground retention? Mr. Freeman replied yes.

Mark Boyd asked if there was a drainage report created? Mike Wilson said no a drainage report has not been executed. He stated the runoff runs from south to north which puts it in Pioneer Adams I. The concerns of the neighbors aren't completely clear. We have detention pond on Pioneer I to handle the retention for that property. Of course we will take care of it. Mr. Boyd added until the development is complete you won't know how big retention will be. Mr. Freeman stated we have the pond built into the project. Mr. Wilson said we will control our runoff on our property. It is our intent to keep as many trees as possible. We also have a 6 foot wood fence that will shield surrounding neighbors. Mr. Boyd said it isn't uncommon to have zoning then a plat which a drainage report is required for. Just want to see how it would be handled since there is not a drainage report. Mr. Brown added the ground will be leveled that should help with the drainage. Mr. Wilson agreed. He said it is in our best interest to keep water away from our buildings. I think we will improve the drainage from what it is now.

Curtis Moore stated the water runs off of SE 23rd Street into my backyard. They will be blocking that and will need to resolve it.

Eric Newman said they are talking runoff and we are talking backing up of the water. If they level their property there will be way too much runoff for the creek and their retention pond. We are concerned about upstream. I have seen on Pennsylvania Street where the water was going across the top of the drainage pipe because it couldn't handle all the water. If its channel narrows it will back up. Mr. Boyd said they will account for the entire drainage basin. It will be held on the property any overflow will go over the pipes. That is what they are designed to do. It may not happen but with all the flat property it will cause more flow.

Ms. Hoferer asked if this property will need to be platted? Mr. Thurbon replied yes and a drainage report will be done at that time.

Yvonne May stated she was at the NIA meeting when this was presented. She said the members thought it was informal and informational only. We didn't know there should have been a vote for the proposal. We weren't given much information at all. Ms. Hoferer said there was no formal vote taken? Ms. May replied no. At that time we weren't told when it was going to be heard by the Planning Commission.

Mr. Blackmon said what about traffic? Mr. Thurbon said traffic could be reduced with this development instead of what could be generated with it current commercial zoning. He said it is estimated 10 trips per day per unit. With 20 units it would make 200 trips. They are also rezoning ½ acre of commercial. It could be strip mall, restaurant, etc. and that would generate additional traffic. In figuring with what is proposed it is estimated 250-300 trips per day. With single family zoning it would be estimated at about 200 trips, which isn't a big difference. He also stated once the commercial is in the trip numbers it could be higher with that is the current zoning. Mr. Blackmon said the reality is there will be situations with traffic, more than a normal residential neighborhood. He said they did a great job with the first development, with what was there it is much better now than before. This property doesn't have the same situation.

Mr. Boyd stated this is located at two major arterials. He said the model would make this a potential commercial corner. In looking at the model residential doesn't fit here. Both streets are five lane and prime for commercial properties. Mr. Blackmon added there will be traffic and safety issues. Mr. Boyd said no matter what is developed there will be the same amount of trips. Mr. Blackmon pointed out the property across the street has been vacant for many years. Mr. Boyd agreed and said there have been other corners in the city that have been vacant for years. Mr. Blackmon said we don't see the commercial entities running to these corners. Nothing is in concrete in this city. Jim Brown stated it is our job to review the rezoning. Mr. Thurbon said there are options and you can make modifications since it is a PUD.

Mr. Boyd asked will the two houses to the west of this development be useless for commercial? Mr. Thurbon said they will likely have right in and right outs because of the medians. Mr. Thurbon said the two lots the houses are on could be combined into one in the future. Mr. Boyd asked if access would be allowed this close to the intersection? No one will want to own those homes as single family homes and it will be rendered useless as commercial. Mr. Thurbon said if the lots are combined they could be used as an office. I don't think they could be developed individually but may if they were combined.

Mr. Boyd asked if the building is built on slab and if so is there a storm shelter? Mr. Freeman replied said the buildings are on slab and both developments have storm shelters.

MOTION:

Mark Boyd moved approval as written by staff, seconded by Doug Bassett.

Michelle Hoferer stated she understands why this location would be a good place to put this type of development since it has been vacant for so long. We have approved many of these types of developments and there is a concern there is too much moderate income housing in this area. She said she is opposed to this proposal. She added she thinks there will be some type of similar development located at 15th & Adams in the future.

Doug Bassett said he thinks the Pioneer Adams I to the north of this property is a great development. He said this property has been vacant for years. He said the zoning on the corner is C-2. This is a use with 49 units which is comparable to an apartment complex and the number of people isn't that much difference. I don't think drainage will be an issue. I think this is a great project and I will vote in favor of it. I hope to see more of these projects as infill projects.

Mark Boyd said he echoes Mr. Bassett's comments. He said he doesn't know the developer personally but he does know he has a great reputation around town with the quality developments he builds. Mr. Boyd added he doesn't think we have enough moderate housing in Topeka and will be voting in favor of the proposal.

Jim Brown stated he will support the proposal. This property has been vacant for years and this development will help generate more tax dollars. He added with Mr. Freeman as the developer it will be a great development.

Exparte communications – Mr. Blackmon stated he did receive a phone call regarding the development.

Restated motion: Mark Boyd moved approval as written by staff, seconded by Doug Bassett.

APPROVAL. (5-2-0) Commissioners Blackmon and Hoferer voted no.

Petition to Stop Rezoning of SE 21st St (S. side of 21st from Adams to Pennsylvania)

Petition summary and background	We want the South side of SE 21 st St from Adams to Pennsylvania to remain zoned R-1 and C-2. We DO NOT want to be rezoned to M-2 (Multi-housing).
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to VOTE against the zoning change.

RECEIVED
CITY OF
TOPEKA, KANSAS
2008 DEC 11
11:08 AM

Printed Name	Signature	Address	Comment	Date
Justina Campos	Justina Campos	710 NE Wakarusa		12/18/08
Ric Myers	Ric Myers	2207 SE Penn	Repat Residential	12-8-08
Darlene Coelho	Darlene Coelho	2232 SE Pennsylvania		
Bryanna Muroz	Bryanna Muroz	2235 SE Pennsylvania		
Donna Muroz	Donna Muroz	" "		
Richard Barnes	Richard Barnes	2335 SE Penn Ave		
Joseph Harper	Joseph Harper	2334 SE Penn Ave		
Jeanne Harper	Jeanne Harper	2334 SE Penn. Ave.		
Mary Cook	Mary Cook	2347 S.E. Penn.		
Candice Cook	Candice Cook	2347 S.E. Penn.		
William R. Chapman	William R. Chapman	2401 SE Maryland		12/08/08
Nita Sellens	Nita Sellens	2401 SE Maryland	Keep Residential	12/08/08

Petition to Stop Rezoning of SE 21st St (S. side of 21st from Adams to Pennsylvania)

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Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to VOTE against the zoning change.

RECEIVED
CITY CLERK
2008 DEC 10 AM 11:08
TOPEKA KANSAS

Printed Name	Signature	Address	Comment	Date
Theresa Eagleman	[Signature]	2112 S. Adams St		
Korena Rodriguez	[Signature]	209 SE Pennsylvania.		
Pat S. Hinton	[Signature]	2129 SE Pennsylvania		
Leann Marshall	[Signature]	2301 SE Mass.		
Robin Spencer	[Signature]	2349 SE Mass.		
Jerry Spencer	[Signature]	1349 SE Mass.		
Thomas Tatum	[Signature]	2326 SE Massachusetts Ave		
Beth Carson	[Signature]	2310 SE Massachusetts.		
Mike Calhoun	[Signature]	2306 SE Massachusetts		
Joseph Walla	[Signature]	2300 S.E. Massachusetts		
Wanda Beers	[Signature]	2333 SE Indiana		
Alvin May	[Signature]	2400 SE Pennsylvania		

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Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to VOTE against the zoning change.

RECEIVED
CITY CLERK
10 A II
2008 DEC 10
TOPEKA, KANSAS

Printed Name	Signature	Address	Comment	Date
Liliana Lopez	Liliana Lopez	2105 SE Pennsylvania av.		12-06-08
Peggy Lewis	Peggy Lewis	2115 SE Pennsylvania Av		12-06-08
Edith Newman	Edith Newman	2119 Pennsylvania		12/06/08
Sandra Newman	Sandra Newman	2119 Pennsylvania		12/06/08
Karl R Feters	Karl R Feters	8200 S E 22 nd St		12-6-08
Stephanie McCreary	Stephanie A McCreary	2023 SE Massachusetts		12-6-08
KARLENE MOORE	Karlene Moore	2305 SE Main Ave.		12/6/08
Wanda Moore	Wanda Moore	2205 SE Main Ave		12/6/08
SADIE HEFNER	Sadie K Hefner	2133 SE Adams St		12/06/08
Robert May	Robert A. May	2400 SE Fern Ave		12/6/08
Deaglo Clements	Deaglo Clements	2141 S.E. Adams		
C. Higgins	C Higgins	2144 S.E. Adams		

We want the South side of SE 21st St from Adams to Pennsylvania to remain zoned R-1 and C-2. We DO NOT want it to be rezoned to M-2 (Multi-housing).

We, the undersigned, are concerned citizens who urge our leaders to VOTE against the zoning change

Date _____

James C. Perkins Frances Gladys
2115 3rd Penn

11 Avenue M
2400 SE Desha
Lynnwood WA 98036
415 SE Harbor Rd

415 SE Harper Blvd

W. Markle Redgrave

811 St Branner (07)

12/21/68

Catrina Paffhausen

3376 SW Tava

12/9/08

Betty Kingfester-Bane Betty Kingfester-Bane

73355E Pennsylvania (67)

12/9/108

[illegible]



CITY OF TOPEKA

PLANNING DEPARTMENT
David Thurbon, Director
620 SE Madison Street, Unit 11
Topeka, Kansas 66607-1118
Tel.: (785) 368-3728

Fax: (785) 368-2535
www.topeka.org

MEMORANDUM

DATE: December 11, 2008

TO: Honorable Mayor William W. Bunten and Members of Topeka City Council
Norton N. Bonaparte, Jr., City Manager/CEO

FR: Cylus Scarbrough, Planner I

RE: **PUD08/5 Pioneer Adams II, L.P. by Temple of Deliverance Church**

Please be advised that protest petitions were filed by the December 1, 2008, deadline regarding the above zoning proposal. The extent of protest constitutes **42.8%** of the required notification area. Pursuant with K.S.A. 12-757(f)(1), the zoning proposal cannot be passed, since the extent of protest exceeds 20%, except by at least a three-fourths vote (7 of 9) of all members of the City Council. Accordingly, the City Council may:

1. **Adopt** the Planning Commission's recommendation by Ordinance, subject to a three-fourths vote;
2. **Return** such recommendation to the Planning Commission for further consideration. If the case is remanded back to the Planning Commission, it will still require a three-fourths vote of the City Council to approve the rezoning.

Accompanying is a copy of the protest area map and protest computations.

Pioneer Adams II, L.P.

Protest Petitions

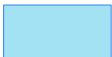
Owner Name	Property Address	Property Area (square feet)
Mr. & Mrs. Mulryan	2141 SE Adams St.	8,375
Mr. & Mrs. Hinton	2129 SE Pennsylvania Ave.	10,170
Mr. & Mrs. Sanders	700 SE 22 nd St.	38,578
Brenda McClelland	2121 SE Pennsylvania Ave.	8,009
Theresa Eagleman	2112 SE Adams St.	13,171
Mr. & Mrs. Eklund	2109 SE Pennsylvania Ave.	8,772
Enrique Hernandez	2100 SE Adams St.	13,634
Mr. & Mrs. Huggins	2144 SE Adams St.	10,145
Peggy Lewis	2115 SE Pennsylvania Ave.	12,208
Mr. & Mrs. Newman	2119 SE Pennsylvania Ave.	8,020
Terry Inc.	2030 SE Pennsylvania Ave.	334
Mr. & Mrs. Heflin	2133 SE Adams St.	12,578

PUD08/5 Pioneer Adams II, L.C.



Requested Area

Notification Area

 Petitions Filed by Property

LEGAL PROTEST COMPUTATIONS

PUD08/5 Pioneer Adams II, L.P.

Total Area..... 658,708.74 square feet
Less Request Area..... 173,443.08 sq. ft.
Less R/W Area..... 148,919.86 sq. ft.

Net Area..... 336,345.80 sq. ft.

Protest Area..... 143,994.21 sq. ft.

$$\frac{\text{Protest Area}}{\text{Net Area}} = .428113 \text{ or } 42.8\%$$



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 2, 2008

+ Back Print

DATE: December 16, 2008

CONTACT PERSON: David Thurbon/Bill Fiander **DOCUMENT #:**

SECOND PARTY/SUBJECT: City of Topeka Planning Commission **PROJECT #:** ACZR08/1

CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 110 Planning

CIP PROJECT: No

ACTION OF COUNCIL: 12-09-08 First Reading. **JOURNAL #:**

PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending City of Topeka Code Section 48-24.01 through 48-24.07 concerning planned unit development districts and specifically repealing said original sections. Final Reading. (ACZR08/1)

(Approval would amend the zoning regulations by making properties less than 1 acre eligible to be re-zoned PUD as "transition areas" and providing flexibility in amending and recording PUDs.)

POLICY ISSUE:

Changes to the zoning regulations promote more compatible infill development by allowing development within a PUD if they are in a "transition area". This would be consistent with the Comprehensive Plan.

STAFF RECOMMENDATION:

The Topeka Planning Commission recommended **APPROVAL** by a vote of 7-0-0 at their October 27, 2008 meeting as reflected in their attached minutes. The Planning Department recommended **APPROVAL**.

BACKGROUND:

Current zoning regulations do not allow for properties less than 1 acre to apply for a Planned Unit Development (PUD). The intent of the PUD district is to plan for larger scale development that has a mix of uses and/or owners without some of the design restrictions imposed by a typical zoning district. Likewise, PUDs can ensure that only uses and character that are compatible to the surrounding neighborhood will be allowed.

This amendment allows smaller properties less than 1 acre to become a PUD if they are a transition between more intensive development and less intensive development. This will give owners, neighbors, planners, and decision-makers one more tool to promote compatible development in those more difficult to develop transition areas.

Other amendments made within ordinance reflect current procedural practices, and provide additional flexibility to amend and record PUDs.

BUDGETARY IMPACT:

n/a

SOURCE OF FUNDING:

n/a

ATTACHMENTS:

[Ordinance](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending City of Topeka Code § 48-24.01 through § 48-24.07 concerning planned unit development districts and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 48-24.01, Regulations generally, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article, are the district regulations for the "PUD" planned unit development district. A development plan shall not be inconsistent with the following general standards for use of land, and the use, type, bulk, design and location of buildings, the density or intensity of use, the common open space, the public facilities and the development by geographic division of the site as well as with the surrounding or adjacent properties.

One or more use groups, referring to one or more of the zoning districts, shall be established on the master plan. The use regulations, dimensional requirements, off-street parking regulations and sign regulations for each of the use groups shall be as set forth in each of the corresponding zoning districts contained in this code, unless other requirements are specifically set forth on the master plan or the site plan.

Section 2. That section 48-24.02, Use regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use regulations.

(a) *Permitted uses:* A planned unit development district may provide for any use or combination of uses that are listed in the use regulations of the various districts contained in this chapter, subject to applicable limitations, provisions or conditions specified therein and in accordance with the following regulations:

(1) All approved permitted uses of this district shall be geographically designated and grouped by category on all plans in like manner as other districts contained in this chapter, either by individual group or in combination therewith.

(2) Permitted use categories and any approved conditional uses provided by the individual categories shall be specifically designated on all approved plans and shall be set forth in the adopting ordinance or resolution.

(3) Provided that all applicable limitations, provisions and conditions specified by use and set forth in this district are complied with, there may be use changes or relocations within each group category provided that the approved plan is not modified except as otherwise provided for by the procedures of this district.

(b) ~~*Dimensional requirements:*~~ *Setback and Height regulations.*

~~(1) *Intensity of use:*~~

~~a. *Residential:* The average land area shall not be less than the following standards which shall be exclusive of public street right of way:~~

TABLE INSET:

Single family	6,000 sq. ft./unit
---------------	--------------------

Two family-	2,500 sq. ft./unit—
Multiple family	1,000 sq. ft./unit—

~~b. Office and institutional: The minimum land area for any individual principal use or structure shall be 7,500 square feet.~~

~~c. Commercial/industrial: The minimum land area for any individual principal use or structure shall be 10,000 square feet.~~

~~(2) Area and height regulations:~~

~~a. All structures shall set back from all street right-of-way and perimeter boundary lines a distance of not less than 30 feet.~~

~~b. The height and front, side and rear yard setbacks for individual structures within the planned unit development and which are not applicable to paragraph "a" above, shall be determined in conjunction with the final approval of the planned unit development plan.~~

~~c. The height of structures shall be determined in conjunction with the review and approval of the master plan of the planned unit development.~~

(3c) *Off-street parking regulations.* The provisions of article XXX, Off-Street Parking Requirements shall apply to the planned unit development district in all respects except for the specified standards establishing the required number of spaces. Off-street parking regulations shall be based on the applicable requirements for each proposed use as set forth in this code. The planning director can vary from this requirement based on factors provided by the applicant, including but not limited to, the

use of shared parking, near by public parking or other factors that justify a lesser parking requirement. ~~The required on-site parking for each geographically designated use group within the district shall individually average and conform to the following minimum standards:~~

~~a. Residential use groups: two spaces/unit.~~

~~b. Office and institutional use groups: Four spaces/1,000 sq. ft. of floor area for professional offices; community facilities and institutional uses shall be subject to the provisions set forth in article XXX, Required Number of Off-Street Parking Spaces.~~

~~c. Commercial use groups: five spaces/1,000 sq. ft. of floor area.~~

~~d. Industrial use groups: one space/600 sq. ft. of floor area.~~

~~e. In those instances in which more than one use group category is proposed to be assigned the same geographic area, the parking standards of the use group providing for the more liberal number of spaces shall prevail.~~

~~f. In those instances, when in the opinion of the planning director, a proposed use is not clearly and generally recognized and identified as being subject to one of the aforementioned provisions, then the provisions of article XXX, Required Number of Off-Street Parking Spaces shall prevail as the standard, all as determined by the planning director.~~

(4d) *Signs*: The number, location, size, area, height and type of signs shall be determined in conjunction with the approval process.

Section 3. That section 48-24.03, Requirements and development standards for the planned unit development district, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Requirements and development standards for the planned unit development district.

The following performance criteria shall be required of all planned unit developments and shall be addressed by the master plan:

(a) ~~Applicability~~Size of Parcel:

(1) In order to encourage the efficient use of land and resources; promote greater efficiency in public and utility services; and, encourage innovation in the planning, design and building of all types of development, the minimum site size requested for a planned unit development district shall be ~~five~~one (51) acres.

(2) ~~Parcels containing less than fiveone (51) acres, but more than one (1) acre may be sought for reclassification to the planned unit development district where because of environmentally sensitive areas, existing natural features, the land is completely surrounded by development, the age of existing development or scenic assets, it can be demonstrated that such development is more appropriate and efficient than could be achieved through conventional development.~~ the planning director determines the proposed PUD to be a "transition area," defined as an area that separates a non-residential use group

classification("O&I", "C", or "I" districts alone or within a PUD) from another non-residential use group classification or a residential use group classification ("R" or "m" districts alone or within a PUD).

(b) Additional standards and requirements for projects on less than ~~five~~one (51) acres.

(1) The use group category assignment of the planned unit development will be comparable to that of surrounding properties in the neighborhood.

(2) The density and design of the planned unit development shall be compatible in use, size and type of structure, relative amount of open space, traffic circulation and general layout with adjoining land use, and shall be integrated into the neighborhood.

(3) The development shall not have any greater impact on existing streets and utilities than that anticipated for a conventional development of the site.

(4) The development shall not adversely affect views, light and air, and use and enjoyment of neighboring properties any more than would a conventional development.

(5) ~~In addition to the requirements of Section 48-24.04(a), t~~The master planned unit development plan shall also include building elevations for all structures and details of materials to be used for external construction, when determined necessary by the planning director.

(c) Property Owners Association. Areas within the planned unit development which are designated as private streets, private utility services, common areas, recreation areas, or other open space set aside for the benefit of tenants and property owners, shall be maintained by the property owners association or, in the alternative, property owners within the planned unit development. In the event the property owners association or property owners within the planned unit development fail to maintain such areas, the governing body may proceed under applicable ordinances and/or resolutions to maintain such areas. All costs incurred by the governing body in maintaining such areas shall be assessed against the lots within the planned unit development as provided for by law. Nothing contained herein shall be construed as creating a duty on behalf of the governing body to enforce any of the duties, obligations, or responsibilities of the property owners' association or in the alternative, individual property owners.

(d) Platting. Building or zoning permits shall not be issued nor any development initiated on any property designated as planned unit development until such time that the property has been platted as a subdivision; or replatted as a subdivision when determined by the planning director that conditions and circumstances relating to utility extension and service, street or alley right-of-way, topographic and drainage factors, easements, or vehicular access warrant said replat.

(e) Access.

(1) All drives, lanes, streets, culs-de-sac, and other accessways within the planned unit development shall be owned and maintained by the property owners' association or owners within the planned unit development unless it is determined by the planning commission that there is a public need for local

streets and/or major trafficways to transverse the district. In such instances, the transversing streets and/or trafficway right-of-way shall be dedicated by the developer in accordance with the plat subdivision regulations.

(f2) All drives, lanes, streets, culs-de-sac and other privately owned accessways providing accessibility to individual structures, buildings, and uses within the planned unit development shall, by the nature and intent of the district, be considered and serve as mutual rights of access for owners, tenants, invited guests, clients, customers, support and utility service personnel and emergency service providers, including law enforcement, fire protection and ambulance services. No gates, structures or other barriers shall be constructed across said accessways which may impede, limit, or restrict the above rights of access.

(g3) The site will be accessible from public streets which are adequate to carry the traffic that will be imposed upon them by the proposed development, streets, and driveways on the site of the proposed development will be adequate to serve the residents, occupants, or users of the proposed development. Traffic control signals will be provided without expense to the city when the governing body determines that such signals are required to prevent traffic hazards or congestion in adjacent streets.

(h4) All drives, lanes, streets, culs-de-sac, accessways, and parking lots shall comply with all applicable provisions of article XXX in respect to surfacing, design, screening, lighting, and drainage.

(if) Other standards. Other developmental standards, requirements, and provisions of applicable jurisdictional units including but not limited to those of public

works, fire and water district, law enforcement, utilities, and parks and recreation, and which may not be specifically set forth in this article, shall apply and the master and final planned unit development plans should account for such and reflect a development design accordingly provided that variances and waivers are not granted by the appropriate authority.

Section 4. That section 48-24.04, Procedure for securing approval of a planned development and the establishment of a planned development district, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Procedure for securing approval of a planned development and the establishment of a planned development district.

Prior to any use or development within the planned unit development district, the district shall be established in accordance with the provisions of this article, including the approval of all plans set forth in the procedure.

(a) Application to amend to the district. Except as set forth by this article, a petition to reclassify property to the planned unit development district shall be as established in article XXXIII, Amendments, and include like contents. Additionally, the application shall include ~~twelve~~fifteen (12~~5~~) copies of the planned unit development master plan which shall consist of the following documents, information and graphics unless determined to be unnecessary by the planning director:

(1) Legal description of the proposed district in its entirety, total acreage, and planned unit development name/designation.

(2) Legal description of each proposed use group category with corresponding acreage.

(3) The site plan shall identify the name of the planned unit development in large, bold letters centered across the top of all plan sheets; the general location and arrangement of all existing structures; the proposed traffic circulation pattern within the development; the approximate location of proposed and existing major streets and major pedestrian and bicycle routes, including major points of access; the areas to be developed for parking; the points of ingress and egress including access streets where required; the relationship of abutting land uses and zoning districts; proposed types of signage; proposed lots and blocks, if any; proposed public or common open space, if any, including parks, playgrounds, school sites, and recreational facilities.

(4) The site plan of the development shall be at a minimum scale of one (1) inch equals fifty (50) feet, composed of one (1) or more sheets with an outer dimension of twenty-four (24) inches by thirty-six (36) inches. A single-line border shall be provided around all plan sheets measuring exactly one (1) inch from the edge of the sheet except along the left side of the sheet which line shall measure exactly two (2) inches from the edge. The scale, north point and most recent date of preparation shall be so indicated on the plan.

(5) Graphically reflect the geographic location and designation of each use group category proposed.

(6) The anticipated density, number, maximum height and type of residential units; and floor area, maximum height and types of business, commercial and industrial use presented in tabular form in comparison to minimum applicable standards.

(7) Existing topographical character of the land at a contour appropriate with the scale of the project; all watercourses, flood plains, unique natural features, including wildlife areas and vegetative cover, and recognized historical sites and structures. Further, all existing streets, alleys, easements, utility lines, and existing land use shall be included on the plan.

(8) Total land area, approximate location, and amount of open space included in the residential, business, commercial, and industrial areas.

(9) When a planned development includes provisions for common open space, streets, utilities, drainageways or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space, streets, utilities, drainageways, or recreational facilities.

(10) A preliminary plat of subdivision pursuant to the applicable ordinances, rules and regulations relating to subdivision approval; or a copy of the existing recorded plat which is appropriate for the intended plan.

(11) Area shown on the site plan shall extend beyond the property lines of the proposal to include a survey of the area within one hundred fifty (150) feet of the proposal, exclusive of public right-of-way, at the same scale as the proposal and include the following:

a. Land uses, location of principal structures, and major existing landscape features.

b. Traffic circulation system.

c. General topographical mapping at same scale as master plan.

(12) Traffic impact analysis as defined by this chapter, provided however, if in the opinion of the planning director, upon determination at preapplication conference that the intensity and scope of the requested planned unit development is of such nature that said impact analysis is not warranted, the director may waive said requirement.

(13) A development phasing schedule including the sequence for each phase, approximate size in areas of each phase, and proposed phasing of construction of public improvements, recreation, and common open space areas.

(14) One (1) ~~eight and one-half (8 1/2) by eleven (11)~~ by seventeen (17) inch ~~film positive reduction~~ reproducible electronic and paper copy of master plan.

(15) Indicate BOOK PAGE DATE TIME in upper right-hand corner of all plan sheets.

(16) Immediately below the Book, Page, Date and Time entries, provide the following signature block:

Recorded With The Shawnee County Register of Deeds:

(Registrars Name) - Register of Deeds

(17) Include the following statement on the plan sheet:

This Planned Unit Development (PUD) Master Plan has been reviewed and approved in accordance with the provisions of article 24 of the Comprehensive Zoning Regulations of the City of Topeka and Shawnee County, Kansas, and may be amended only as prescribed in Section 48-24.05 of said article and as set forth on this document or as may subsequently be approved and recorded.

(18) Notarized owner's certification of acceptance of conditions and restrictions set forth on the master plan as follows:

OWNER'S CERTIFICATE: (Type Name) agrees to comply with the conditions and restrictions as set forth on the master PUD plan.

In Testimony Whereof:

The Owner(s) of the above described property, (Type Name), have signed these presents this _____ day of _____, (Year)_____.

(Type Name and Title) (Type name and Title)

Be it remembered that on this _____ date of _____, A.D. _____(Year) before me, a notary public in and for said County and State come _____, Owner(s) of the above described property.

I hereby set my hand and affix my notarial seal the day and year last written above.

Notary Public
My Commission Expires:_____

(19) Notarized certification of master PUD plan approval by the secretary to the planning commission as follows:

Certification of Master PUD Plan Approval:

(Planning Director's Name) (Date)

Secretary to Planning Commission

Be it remembered that on this _____ date of _____, A.D. _____, (Year) before me, the undersigned, a notary public in and for said County and State came (Planning Director's Name) who is personally known to me to be the same person who

executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In Witness Whereof, I hereby set my hand and affix my notarial seal the day and year last written above.

Notary Public

My Commission Expires:_____

(b) Action on the petition and master plan of the planned unit development plan by the planning commission and governing body. Upon filing of a petition to amend a district to the planned unit development district as set forth in article XXXIII, Amendments, and as further provided by this article, the planning commission shall review, consider, and act on the petition in a like manner and procedure as provided in said article XXXIII. The appropriate governing body shall consider such proposal upon report and recommendation by the planning commission also in a like procedure as provided in said article XXXIII.

Section 5. That section 48-24.05, Status of the planned unit development upon approval by the governing body, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**~~Status of the p~~Planned unit development ~~upon approval by the governing~~
~~body.~~**

~~For those proposals which are approved to be reclassified to the planned unit development district, the master plan as approved by the governing body with all conditions, revisions, and restrictions as set forth or imposed by said action of the governing body shall be recorded within forty five (45) days of the action date of the~~

governing body by the metropolitan planning agency with the register of deeds. Upon recordation, any changes, revisions, or modifications to the plan shall be in accordance with this article and again recorded in a similar manner. Failure by the applicant to provide the planning agency the approved plan on a permanent-type drafting film material on sheets twenty four (24) inches by thirty six (36) inches suitable for recording within thirty (30) days of the action by the governing body shall deem the petition as null and void. Following the recordation of the master plan, an ordinance or resolution shall be adopted by the governing body to officially amend the district zone as set forth below:

(a) Form of ordinance or resolution. An ordinance or resolution approving a planned unit development and establishing a planned unit development district shall specify the restrictions that will, pursuant to the development plan, apply in the planned development district and shall describe the boundaries of such district or set such boundaries out on a map that is incorporated and published as a part of such document. Such document shall also specify the conditions and restrictions that have been imposed by the governing body on the planned development and shall designate geographic areas by use group category. Prior to consideration of an ordinance by city council, the applicant shall submit the plan on a permanent-type drafting film material on sheets twenty-four (24) inches by thirty-six (36) inches suitable for recording.

(b) ~~A planned unit development plan which has been approved and recorded as provided above shall not be modified, revoked, or otherwise impaired by action of the governing body without the consent of the developer for a minimum period of three years.~~ Recording. For those proposals which are approved to be reclassified to the

347 planned unit development district, the master plan, and site plan (if concurrent approval
348 is requested by the applicant) as approved by the governing body with all conditions,
349 revisions, and restrictions as set forth or imposed by said action of the governing body
350 shall be recorded within sixty (60) days of the action date of the city council by the
351 applicant with the register of deeds. Failure by the applicant to record the plan within
352 the prescribed time period or provide the planning department fifteen (15) copies of the
353 recorded plan within ninety (90) days of the action by the governing body shall deem the
354 zoning petition as null and void. The planning director upon written request of the
355 applicant and for good cause may extend this time period an additional thirty (30) days.
356 Upon recordation, any changes, revisions, or modifications to the plan shall be in
357 accordance with this article and again recorded in a similar manner.

358 (c) Site development plan review. If the site plan was not submitted and
359 approved concurrently with the master plan, the following procedure shall apply:
360 Following the recording of the master planned ~~urban~~ unit development plan and prior to
361 application for any building development on the site, the applicant shall be required to
362 submit a site development plan in accordance with the procedures set forth as follows:

363 (1) Submission of Site Development Plan. A site development plan
364 shall be submitted for the entire area as per the approved master planned unit
365 development plan or for a subarea (single use group area) within the planned
366 development provided: 1) The plan of the subarea meets all the requirements of
367 the master planned unit development plan; 2) The dwelling unit density for
368 residential development or total floor area for non-residential development does
369 not exceed the dimensional standards established by the master plan unit

development plan; 3) The subarea can function as an independent development unit with adequate access, services, utilities, open space; etc.; and, 4) The subarea is more than two (2) acres in size. The applicant shall submit ~~twelve~~fifteen (12~~5~~5) copies of the site development plan which shall contain the following information:

(a) The title of the project, centered across the top of the plan sheet, and the names of the engineer or surveyor and names of the developer; and, a signature panel for the Planning Director's approval.

(b) A north point, scale, date and vicinity map.

(c) Existing zoning and improvement of immediately adjacent properties.

(d) The boundaries of the entire planned unit development or the specific land use area for which development is sought; all existing property lines; setback lines; the right-of-way and pavement dimension of existing streets; the location, dimension, height and square feet of all existing buildings and identification of those to be retained or removed; location, alignment and area of water courses, waterways or lakes; and other physical features in or adjoining the proposed development.

(e) The right-of-way and pavement dimension of all proposed streets, loading and parking areas; location, height, type of fixture, and intensity of illumination of all exterior lighting; location and dimension of storm drainage facilities and all curb cuts and access points.

(f) The location, dimension, height, and square footage of all proposed buildings, main and accessory, including dwelling type and number of dwelling units per building.

(g) The location of trash receptacles including the type and height of trash enclosures.

(h) The location and dimension of proposed recreation areas, open spaces, and other amenities and improvements.

(i) The location, character, size, height, and orientation of existing and proposed signs.

(j) The location, type, height, and materials of all fences and walls.

(k) The location and type of all existing trees with a caliper of eight (8) inches or greater. The plan shall indicate which of the trees are to be retained and which are to be removed.

(l) A landscape plan showing the location, description, size, height, and spacing of all new plant material.

(m) A tabulation of the total number of acres in the project, total number of acres in the land use area for which site plan approval is sought, the percentage and acreage thereof proposed to be allocated to residential use, non-residential uses, off-street parking, common open space, parks, schools, and other reservations.

413 (n) A tabulation of the total number of dwelling units in a
414 residential area and the overall project density in dwelling units per gross
415 acre. Tabulation of floor area by use in a non-residential area.

416 (o) The type, location, and size of all existing and proposed
417 utilities and utility easements extending through or adjacent to the site.

418 (p) A topographic survey showing the elevation of streets,
419 buildings, structures, water courses, and their names. The topography
420 shall be shown by adequate spot elevations. The finished grade for the
421 entire site shall be shown and the proposed first floor elevation of all
422 buildings (except for garages and storage areas which shall be located at
423 or above the one-hundred (100) year flood elevation) shall be at or above
424 the elevation of (1) the flood water of record; or (2) the intermediate flood
425 level as determined by the U.S. Army Corps of Engineers; or (3) the flood
426 level as determined by the Department of Public Works, whichever is
427 greater. All horizontal dimensions shown on the site development plan
428 shall be in feet and decimals of a foot, all bearings in degrees, minutes
429 and seconds.

430 (2) Review and approval of site development plan. Site plans shall be
431 approved administratively by the Planning Director after first circulating the plan
432 and all attachments to all applicable reviewing departments and agencies for
433 written comment. This provision however shall not prohibit the Planning Director
434 from requesting a recommendation from the ~~Zoning and Platting~~
435 ~~Committee~~planning commission. The site development plan shall be reviewed for

conformity with the provisions of the master planning unit plan and other applicable codes and regulations of the appropriate jurisdiction. The Planning Director may approve the site development plan as submitted, approve with modifications, remand back to the applicant for modifications, or deny. If the plan is approved, the Director shall certify thereon his approval and state the conditions of approval, if any. If the plan is disapproved, he shall indicate his disapproval and the reasons therefore in writing to the applicant. Appeals of any decision of the Planning Director shall be submitted to the ~~Zoning and Platting Committee~~planning commission for review and determination. Appeals of any decision of the ~~Zoning and Platting Committee~~planning commission shall be submitted to the ~~governing body~~city council for final action.

(3) Amendments or modifications to approved site development plans must be submitted to the Planning Department for review and determination. Such modifications shall be submitted to all applicable reviewing agencies and departments for review and comment. The Planning Director shall approve, modify, or deny the proposed amendment in the same manner as the submission of the original site development plan. The Planning Director again may submit the proposed amendment to the ~~Zoning and Platting Committee~~planning commission for recommendation.

(4) A stop work order shall be put on a project if any improvements required on the approved site development plan are not adhered to during the development of the site.

Section 6. That section 48-24.06, Amendments to planned unit development plans, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Amendments to planned unit development plans.

Each applicant petitioning for a planned unit development district shall, as part of the application, designate a prescribed manner as to who may initiate amendment(s) to the approved planned unit development master plan ~~and the final site plan. Said procedure shall also be made part of the site plan and shall be recorded of record with the register of deeds. Upon recordation, the amendment procedure as set forth in the recorded site plan shall govern the initiation of all amendments.~~ In addition to the planning commission or city council, the owner may solely initiate amendments to the plan. The terms and provisions of the plan shall extend to and be binding upon the heirs, executors, administrators, trustees, and assignees of the owner. Should more than one entity hold title, then all such affected owners of all such title as determined by the planning director shall be required to execute any such amendment. In lieu of all owners individually executing such document, the planning director may approve a homeowners or property owners association to execute any such amendment if they present evidence their organization has the authority to represent all owners within the PUD.

(a) *Minor amendments to master plan:* Minor changes to a planned unit development master plan may be approved administratively, if at all, by the planning director. Such changes may be authorized without additional public hearings, at the discretion of the planning director. This provision shall not prohibit the planning director

481 from requesting a recommendation from the planning commission.

482 (1) *Minor amendment criteria:* Amendments shall ~~not~~ be deemed as
483 minor if the cumulative revisions to the most recent approved master plan of
484 record which was considered at a public hearing do not include:

485 a. A change to the use and character of the development.

486 b. The possible creation of obstacles, barriers and service
487 problems to traffic circulation, fire protection, public safety, and public
488 utility services due to the revision(s).

489 c. A reduction by greater than five percent (5%) of the
490 designated open space.

491 ~~ed.~~ An increase by greater than five percent (5%) in the
492 approved number of residential dwelling units.

493 ~~de.~~ Increase the floor area proposed for nonresidential use by
494 more than five percent (5%).

495 f. Increase by greater than ten percent (10%) the approved
496 signage including, but not limited to, height or sign face area.

497 (2) *Submittal of revised master plan with minor amendments.* The
498 proposed revised master plan shall be submitted to the planning director for
499 consideration of approval. Said plan shall be presented on reproducible tracing
500 material in like manner, and substance as reflected on the most recent approved
501 plan. All other data, conditions, and information other than that proposed for
502 amendment shall be identical to the most recently approved plan. Space for
503 acknowledgement of approval by the planning director with date space shall be

reflected on said plan. A letter of transmittal from the designated applicant setting forth in detail all proposed amendments shall accompany the submittal. Upon approval of any revised plan, the applicant shall furnish 16 copies of such plan with the planning agency for distribution to public agencies and utilities. The original tracing will remain on file in the planning agency and the revised master plan shall be rerecorded with the register of deeds in like manner as established with the original filing.

(b) *Major amendments to master plan:* Major changes shall include all any modifications ~~and quantities in conflict with the limitations and provisions as reflected in that do not meet all~~ the minor amendment criteria set forth above. ~~Upon initiation of the amendment as established by the original petition, all major amendments to the master plan shall be submitted to the planning commission for public hearing and recommendation to the governing body as required for the original application and approval. Provided further, that those proposed amendments reflecting the addition of a permitted use group and/or the change in location of a use group by legal description, all property owners within the prescribed notification area as set forth in section 48-33.04 shall have the same rights of protest as provided by said section 48-33.04 and further the proposed amended plan shall only be approved by the governing body in a like manner as prescribed by section 48-33.04.~~ A major amendment is processed and approved in the same manner as the original application. Amendments that add a permitted use group and/or change the location of a use group by legal description are subject to protest as provided for under state law for any other rezoning.

Section 7. That section 48-24.07, Planned unit development plan variance

procedures, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Planned unit development plan variance procedures.

The planning commission is solely empowered to grant variances to the provisions of this article and only under the following circumstances:

(a) The applicant demonstrates that the plan as submitted ~~is equal to or better~~ more effectively accomplishes the goals and objectives of the comprehensive plan than such plan incorporating the provision for which a variance is requested; or

(b) The strict application of any provision would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, provided that the variance may be granted without substantial detriment to the public good and without substantially impairing the purpose of this article.

Section 8. That sections § 48-24.01 through § 48-24.07 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 9. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



A Capital City Government Working For You...

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 17, 2008

+ Back Print

DATE: December 16, 2008
CONTACT PERSON: Linda Voss
SECOND PARTY/SUBJECT: Trafficway Improvement
CATEGORY/SUBCATEGORY
CIP PROJECT: Yes
ACTION OF COUNCIL:
DOCUMENT #:
PROJECT #: 70114-03
JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70114-03, which provides for widening Gage Boulevard from 10th to 12th Streets, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and repealing City of Topeka Ordinance No. 18956. **First Reading.** *(Council District No. 9)*

(Approval would authorize a total project budget in the amount of \$1,188,000 for the widening of Gage Boulevard from 10th to 12th Streets.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Adopt the Project Budget and Ordinance as presented.

BACKGROUND:

On Gage Boulevard there are left turn lanes at 10th Street and 12th Street. This project will widen Gage to provide a five-lane section from 10th Street to 12th Street. The installation of a two-way left-turn lane will improve traffic safety in this area.

A project budget of \$148,000.00 was previously approved by Council on 9/5/07 for right-of-way and design costs. The additional \$1,040,000.00 will fund construction and other remaining costs of which \$240,000.00 will be the City's share and \$800,000.00 will be federal funds.

The Approved CIP for 2009 and 2010 shows \$120,000.00 each year for "STP Safety Projects". These funds totaling \$240,000.00 make up the City's share of construction and other remaining costs for this project.

BUDGETARY IMPACT:

Total Project Budget Cost: \$1,188,000.00

Item #29

Previously Approved Budget for Design & Right-of-Way: \$ 148,000.00
Additional for Construction and Remaining Items: \$1,040,000.00

SOURCE OF FUNDING:

General Obligation Bonds or any other lawfully available funds: \$388,000.00
Estimated annual debt service on the bonds is \$19,669 for 20 years.
STP Safety Project Federal Funds: \$800,000.00

ATTACHMENTS:

[Project Budget](#)

[Debt Service](#)

[Vicinity Map](#)

[Fact Sheet](#)

[Ordinance](#)

PROJECT BUDGET

Project No. 70114-03

Roadway Widening on Gage from 10th to 12th Streets

LOCATION:

SW Gage Blvd from 10th to 12th Streets

DESCRIPTION OF PROJECT:

Widen roadway to provide a center two-way left turn lane

SOURCE OF FUNDS:

CIP 2009 - General Obligation Bonds \$120,000

CIP 2010 - General Obligation Bonds \$120,000

CIP - "STP Safety Projects" Funds

Federal Funds \$800,000

*CIP 2006 - General Obligation Bonds (\$73,000) - Previously approved**CIP 2007 - General Obligation Bonds (\$75,000) - Previously approved**CIP - "STP Safety Projects" Funds***COST ESTIMATE:**

	<i>Previous Approved</i>		
	<i>Budget - City</i>	<i>City</i>	<i>Federal</i>
Construction:		199,299.00	800,000.00
Design:	80,000.00		
Construction Service Fees:			
<i>Construction Inspection</i>		15,000.00	
<i>Construction Staking</i>			
Administrative Fees:			
<i>Legal Dept. Admin.</i>			
<i>Engineering Admin.</i>	4,000.00		
Right-of Way Acquisition:	40,000.00	10,000.00	
Contingency Amount:	16,952.00		
Temporary Notes:	7,048.00	15,701.00	
Total:	148,000.00	\$240,000.00	800,000.00
			1,188,000.00

PUBLIC HEARING:**PROJECT AUTHORITY:**

- a. Statutes: _____
- b. Ord./Res. No.: _____ Date: _____
- c. Improvement District: _____
- d. City at Large: _____
- e. Method of Assessment: _____

PROJECT ENGINEER: Linda Voss

GO Bond Cost of Project

PROJECT: 70114-03

Interest rate	5.25%
Number of Years	20

Cost of Issuance	2.00%
Temp Note interest	5.000%

Principal	\$224,299
Plus Temp Note Interest	\$11,215
Plus Cost of Issuance	<u>\$4,486</u>
Total Project Budget	\$240,000

Annual Debt Service	\$19,669
Annual Debt Service as Percent of Total	8.2%

Total Debt Service (principal and interest)	\$393,371
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Difference Project Cost and Total Debt Service	\$169,072
--	-----------

GO Bonded Indebtedness as of December 2007	\$153,840,000
Heartland Park STAR Bonds	\$10,405,000
College Hill TIF	\$5,840,000
2007 Temporary Notes that Finance Future GO Bond projects	\$9,200,000
Approved, not Included in GO Bond Issue or Temporary Notes--City Projects	\$6,163,840
Approved, not Included in GO Bond Issue or Temporary Notes--Special Assessment Projects	<u>3,944,245</u>
Total Indebtedness	<u><u>\$189,393,085</u></u>
Plus Project	\$189,633,085

SW Gage BLVD - SW 10th ST to SW 12th ST

Attachment Number 3
Page 1 of 1

Gage Park

SW 10th AVE

Project Site

SW Gage BLVD

SW 11th ST

SW Munson AVE

SW Sena DR

SW 12th ST

SW Gage BLVD

SW Churchill RD

SW Huntoon ST

Map Produced On:
July 6, 2007
Map Revised On:
July 6, 2007
Map Reprinted On:
July 6, 2007
Map Produced By:
David E. Fish
Engineering Tech II
(785)368-3052
dfish@topeka.org

No Scale



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FACT SHEET

(11/24/08)

Project No. 70114-03

Gage Boulevard from 10th Street to 12th

Scope: This project will provide for the construction of a five-lane roadway from 10th to 12th Streets. The existing pavement will remain in place – Gage will be widened – then Gage will be overlaid. The project will include miscellaneous items such as storm sewers, sidewalk, and pavement markings.

Design Engineer: Professional Engineering Consultants (PEC)

City Project Engineer: Linda Voss

Construction Inspection: City and Professional Engineering Consultants (PEC)

Construction Staking: Contractor

Cost and Financing: \$240,000 from CIP (funded with GO bonds), and \$800,000 from federal-aid safety funds (plus \$148,000 which has already been approved and spent)

Project Schedule: Construction in summer and fall of 2009

History: The first project budget was for \$148,000 which included the design and right of way costs. This budget includes the construction and inspection fees. Typically inspection will run 8 to 12 percent, on this job we will have to charge most fees to city overhead as all the money is needed for construction.

There is no permanent right of way; however, there are a number of temporary easements, they are being purchased at this time. Utilities are also being designed and relocated at this time. If this budget is approved and the right of way, utilities, and plans are complete this project should let in April of 2009 and construction in the summer or fall of 2009. During construction Gage will be one lane in each direction; it will not close. All businesses will have at least one access point during construction.

This is a safety project. There are left turn lanes at 10th and at 12th. This project will install a two-way left turn lane in between. Not including the crashes at 10th or at 12th there were a total of 117 crashes in this area in four (2004 – 2007) years. There were 71 rear-end crashes, 9 left turn crashes, 11 sideswipe crashes, and 5 fixed object crashes. This included 26 injury crashes resulting in 38 injuries. This project will be beneficial to safety and operation of Gage Boulevard.

The Kansas Department of Transportation awarded these funds to this specific project based on the crash history. The funding is 90 percent federal and 10 percent city for the construction and construction inspection only; however, it is capped at \$800,000. The city can not move the \$800,000 to another job. We must let this project prior to September of 2009 or funds will be lost. We would like to let in the spring so we can construct in 2009.

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and authorizing as amended Street Improvement Project No. 70114-03 which provides for widening Gage Boulevard from 10th to 12th Streets, as more specifically described herein, pursuant to Section A12-1 of the Code of the City of Topeka, and repealing City of Topeka Ordinance No. 18956.

WHEREAS, the Council of the City of Topeka adopted Ordinance No. 18956, effective on September 5, 2007, which authorized Street Improvement Project No. 18956 for improvements to Gage Boulevard between 10th and 12th Streets with a project budget of one hundred forty eight thousand dollars (\$148,000.00) to be funded by General Obligation Bonds and other lawfully available funds; and

WHEREAS, the budget adopted in Ordinance No. 18956 was for design and acquisition of right-of-way and it is necessary to amend the project budget to include the costs of construction.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it is hereby deemed advisable and necessary and is also hereby authorized pursuant to Section A12-1 of the Code of the City of Topeka that the following public improvement be made:

A. GENERAL NATURE OF IMPROVEMENT:

To widen SW Gage Boulevard from 10th to 12th Streets to provide a center two-way left turn lane.

B. TOTAL PROJECT BUDGET COST:

\$1,188,000.00

C. SOURCE OF FUNDS:

General Obligation Bonds or any other lawfully available funds	\$388,000.00
STP Safety Projects Federal Funds	<u>\$800,000.00</u>
TOTAL:	\$1,188,000.00

General Obligation Bonds and any other lawfully available funds.

Section 2. Ordinance No. 18956 is hereby repealed.

Section 3. This Ordinance shall take effect and be in force from and after its
passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 6, 2008

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DATE: December 16, 2008

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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