

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY AUGUST 22, 2012

6:35 p.m.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of easement granting City of Lawrence permission to place waterline across County shop property (Keith Browning);

REGULAR AGENDA

- (2) Consider adopting a Resolution authorizing Douglas County, Kansas to issue its Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project) in the aggregate principal amount of not to exceed \$21,000,000 for the purposes of acquiring, constructing and equipping a manufacturing and warehouse facility; authorizing execution of a Trust Indenture by and between the County and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as trustee; authorizing the County to lease such facility to AGNL Plastics, L.L.C.; authorizing the execution of a Bond Purchase Agreement with AGNL Plastics, L.L.C., as purchaser of the bonds; and authorizing certain other documents and actions in connection therewith. (Craig Weinaug)
- (3) Consider adoption of joint resolution of the Board of County Commissioners of Douglas County, Kansas and the City of Lawrence creating a joint Economic Development Council (Craig Weinaug)
- (4) Consider the following issue regarding the 9th and New Hampshire Tax Increment Financing District: Consider adoption of a resolution dedicating the county share of the new incremental county-wide sales tax generated within the district to the project to reimburse certain eligible project costs. (Diane Stoddard)
- (5) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Public Comment
 - (d) Miscellaneous
- (6) Adjourn

MONDAY, AUGUST 27, 2012

- 5-County Regional Transportation Study Public Officials Briefing at Lawrence City Hall 4-6 p.m., 6th East 6th Street (Two or more Commissioners may attend)

WEDNESDAY AUGUST 29, 2012

6:35 p.m.

-Proclamation for September as National Preparedness Month. (Jillian Rodrigue)

Consent: Temporary business Permits for Donna Wingert Retail sale of Dried Fruit & Nuts (Linda Finge)

Consent: Temporary Business Permit for Cates Haunted Farm (Linda Finger)

Temporary Business Permit for a MotorCross

Consent: Adopt report of the Solid Waste Management Plan annual review (Keith Browning)

-Public Hearing for the I-Codes and eventual adoption (Kay Pettit)

WEDNESDAY, SEPTEMBER 5, 2012

-Consider new policies to regulate towing in Douglas County (Jim Flory)

WEDNESDAY, SEPTEMBER 12, 2012 – Tentatively Cancelled

WEDNESDAY, SEPTEMBER 19, 2012

-Consider a Text Amendment, **TA-8-11-11**, to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture). (Mary Miller is the Planner)

FRIDAY, SEPTEMBER 21, 2012

7:30-9:00 a.m. – Lawrence School Foundation Breakfast at the Lawrence Holidome (Two or more Commissioners may attend. No County business will be conducted)

WEDNESDAY, SEPTEMBER 26, 2012

-Community Corrections Comprehensive Plan Fiscal Year 2012 Quarterly and Year End Outcome Report Format (Deborah Ferguson)

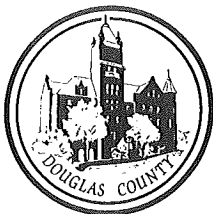
THURSDAY, OCTOBER 11, 2012

3-6 p.m. – Douglas County Senior Services 40th Anniversary Event

SATURDAY, OCTOBER 20, 2012

4-7 p.m.-Douglas County Senior Services Chili Cook off

***Note:** The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

TO : Douglas County Commission

FROM : Keith A. Browning, P.E., Director of Public Works/County Engineer
Michael D. Kelly, L.S., County Surveyor ✓

DATE : August 17, 2012

RE : Consent Agenda
Execute City of Lawrence waterline easement – County Shop property

As you are aware a bridge replacement project is underway on E. 23rd Street in the City of Lawrence immediately adjacent to the County Shop property. The project required relocation of a waterline maintained by the city to be outside of the limits of construction and across the county's property. The waterline's final location is reflected in an easement document in which the city has requested be executed by the county.

The easement document includes a provision that will allow the waterline to be relocated in the future to a site that is more typically associated with waterlines... near to the road frontage that serves as access to the property. Should the county or a subsequent owner desire to reconfigure the use of the property that provision will provide the mechanism.

ACTION REQUIRED: Consent agenda approval is required for Chairman Gaughan to execute the attached WATERLINE UTILITY EASEMENT document.

WATERLINE UTILITY EASEMENT

THE UNDERSIGNED, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, hereby grants, sells, conveys, and delivers unto the City of Lawrence, Kansas, a municipal corporation, a permanent and perpetual Easement for the construction, installation, and maintenance of a waterline, water utilities and all other facilities appurtenant thereto, in, over, under, and through the following described tract of real estate situated in Douglas County, Kansas, to-wit:

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1277.51 feet; thence, S01°37'57"E, 119.19 feet to the south line of the 23rd Street right-of-way and being the Point of Beginning; thence, along said right-of-way, N88°36'08"E, 90.00 feet; thence, S01°37'57"E, 15.00 feet; thence, S88°36'08"W, 10.00 feet; thence, S01°37'57"E, 108.07 feet; thence, S07°56'44"E, 110.94 feet; thence, S03°55'09"E, 17.38 feet; thence, S26°21'06"E, 165.84 feet; thence, N88°14'36"E, 171.69 feet; thence, N01°28'46"W, 142.02 feet; thence, N88°38'03"E, 37.50 feet to the west line of StorGard Addition No.2; thence, along said west line, S01°28'46"E, 15.00 feet; thence S88°38'03"W, 22.50 feet; thence, S01°28'46"E, 141.91 feet; thence, S88°14'36"W, 196.25 feet; thence, N26°21'06"W, 178.44 feet; thence, N03°55'09"W, 19.82 feet; thence, N07°56'44"W, 111.24 feet; thence, N01°37'57"W, 108.96 feet; thence, S88°36'08"W, 50.00 feet; thence, S01°37'57"E, 44.00 feet; thence, S88°36'08"W, 15.00 feet, to the east line of said 23rd Street right-of-way; thence, along said right-of-way, N01°37'57"W, 59.00 feet to the point of beginning.

The above described contains 13,504 square feet, more or less.

Grantee shall have the right of ingress and egress upon the above described Easement for the purpose of maintaining, repairing, or replacing said water utilities and otherwise make all uses of said Easement and do all things necessary or proper for the use of said Easement for said public facilities and structures.

Grantor shall do or cause nothing to be done to interfere with the Grantee's right of use of said Easement for the purposes herein stated.

THE UNDERSIGNED FURTHER WARRANT that it has good and lawful right to convey said easement, and will forever defend the title thereto.

Grantor's Easement Tract Relocation Rights:

Notwithstanding the Easement granted hereunder in, over, under, and through the Easement Tract, Grantor shall have the right and option to relocate the Easement Tract at such time that Grantor redevelops Grantor's property and removes the existing buildings located along the north edge of Grantor's property and adjacent to the Kansas Highway 10 / 23rd Street right-of-way (these buildings currently preclude a waterline utility easement along the north edge of Grantor's property). To exercise the foregoing Easement Tract Relocation Rights, Grantor shall: (i) execute a substitute Easement, specifically referring to this Easement and Grantor's Easement Tract Relocation rights, substantially in the form as this Easement (with the legal description of the Easement Tract revised as provided below and the Easement Tract Relocation Rights contained in this paragraph deleted), (ii) record the substitute Easement with the Douglas County Register of Deeds, and (iii) provide written notice thereof to Grantee. This Easement shall be deemed vacated, released, and of no further force and effect 6 months after the recording of the substitute Easement is recorded, with no further action required by Grantor and Grantee; provided, however, that Grantee, at Grantor's request, agrees to execute and record an instrument specifically vacating and releasing this Easement. During the 6 month period, Grantee may abandon buried water lines in place but shall remove all valves and other at grade facilities located in the Easement Tract and return the surface of the land substantially to its condition before such removal, all at Grantee's sole cost and expense. By accepting this Easement, Grantee agrees and consents to the foregoing Easement Tract Relocation Rights.

The easement tract in the substitute Easement shall be described easement tract: The North 15 feet of Lot 1 of The South East Lawrence Suburban Acres Division and Lots 2 and 3 of Learnard's Suburban Acres Division, subdivisions of the City of Lawrence, Douglas County, Kansas, located in the East half (E1/2) of the Northeast quarter (NE1/4) of Section 7, Township 13 South, Range 20 East of the Sixth Principal meridian, City of Lawrence, Douglas County, Kansas (as measured from the south line of Kansas Highway 10 / 23rd Street right-of-way). This Easement, however, does not encumber the foregoing easement tract and the foregoing easement tract shall only become encumbered if Grantor exercises Grantor's Easement Tract Relocation Rights provided in the immediately preceding paragraph.

THIS AGREEMENT is and shall be binding and obligatory upon the heirs, administrators, executors, personal representatives, successors, and assigns of the parties hereto.

DATED THIS ____ day of _____, 2012.

Board of County Commissioners of Douglas County Kansas by Mike Gaughan (Chair)

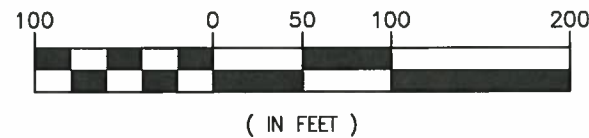
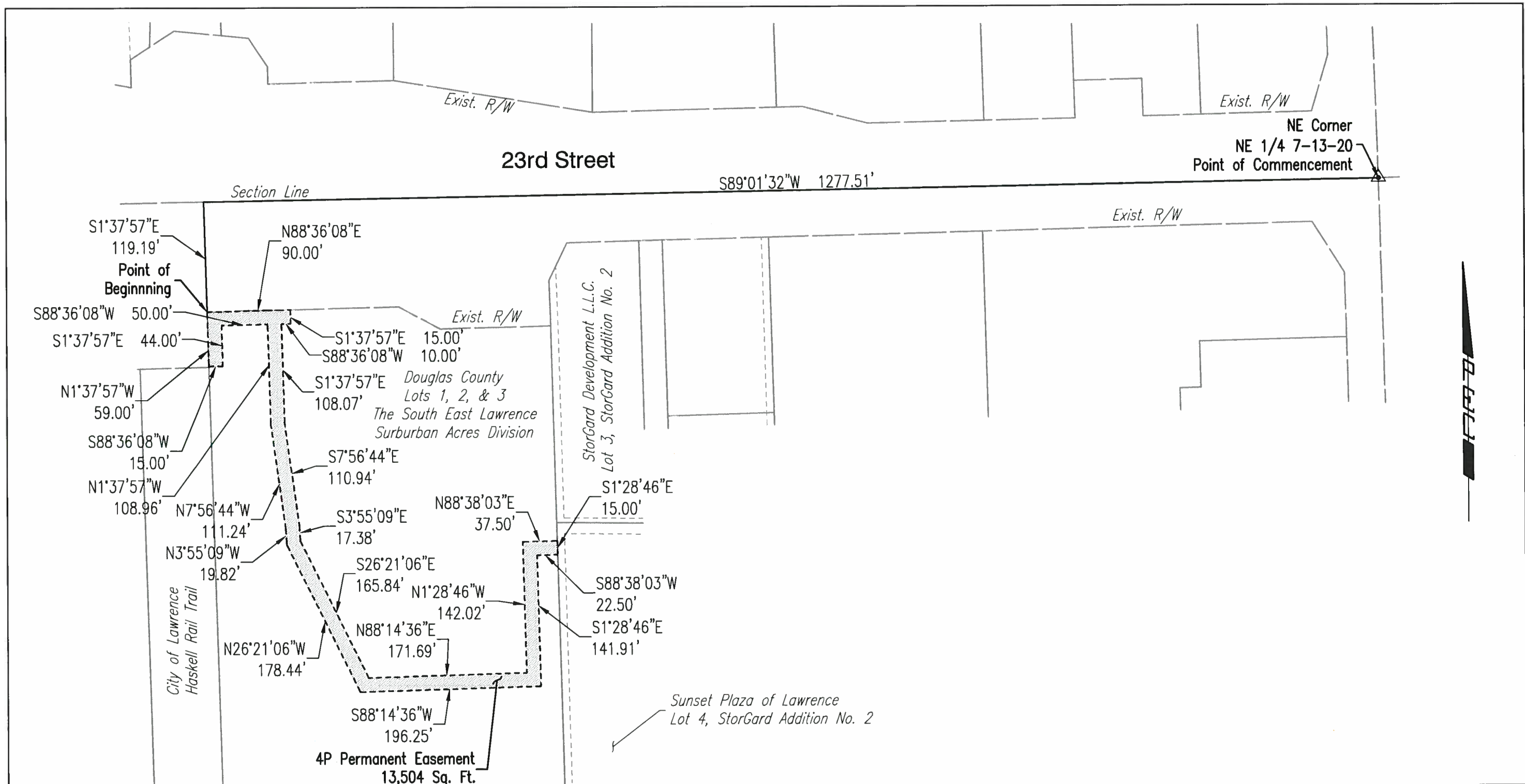
STATE OF KANSAS)
 :SS
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Mike Gaughan, acting on behalf of the Board of County Commissioners of Douglas County Kansas, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

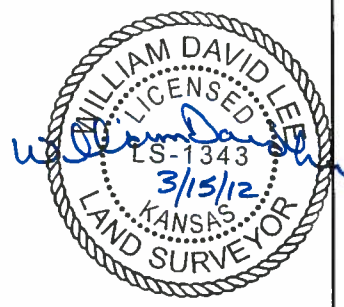
My Commission Expires: _____



LEGEND

	Right-of-Way Line
	Permanent Easement
	Temporary Easement
	Section Corner Monument

23rd Street Utility Design Easement Parcel 4 4P Permanent Easement Exhibit	
IPEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 1263 SW TOPEKA BLVD. TOPEKA, KS 66612 785-233-8300 www.pec1.com	JOB NUMBER: 10A32-02A
	DATE: 03/15/2012
	SCALE: 1" = 100'
	DRAWN BY: CLM
	CHECKED BY: WDL
SHEET NUMBER: 1 OF 1	



RESOLUTION NO. 12-32

**OF THE BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS**

**AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$21,000,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2012
(BERRY PLASTICS PROJECT)**

RESOLUTION NO. 12-32

A RESOLUTION AUTHORIZING DOUGLAS COUNTY, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2012 (BERRY PLASTICS PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$21,000,000 FOR THE PURPOSES OF ACQUIRING A MANUFACTURING AND WAREHOUSE FACILITY; AUTHORIZING EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE COUNTY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., ST. LOUIS, MISSOURI, AS TRUSTEE; AUTHORIZING THE COUNTY TO LEASE SUCH FACILITY TO AGNL PLASTICS, L.L.C.; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT WITH AGNL PLASTICS, L.L.C., AS PURCHASER OF THE BONDS; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS HAS FOUND AND DETERMINED:

A. Douglas County, Kansas (the "Issuer") is authorized by the Kansas Economic Development Revenue Bond Act, as amended, as codified in K.S.A. 12-1740 *et seq.* (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

B. The Board of County Commissioners (the "Board") has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project) in the aggregate principal amount of not to exceed \$21,000,000 (the "Series 2012 Bonds"), for the purpose of paying the costs of acquiring a certain manufacturing and warehouse facility (the "Project"), as more fully described in the Indenture and in the Lease authorized in this resolution, for lease to AGNL Plastics, L.L.C., a Delaware limited liability company (the "Tenant"); and

C. The Board finds that it is necessary and desirable in connection with the issuance of the Series 2012 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Trust Indenture (the "Indenture") with The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 2012 Bonds;

(ii) a Lease (the "Lease") with the Tenant, under which the Issuer will acquire the Project and lease it to the Tenant in consideration of the obligations of the Tenant set forth therein;

(iii) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2012 Bonds by the Issuer to AGNL Plastics, L.L.C.; and

(iv) a Payment in Lieu of Taxes Agreement (the "PILOT Agreement") with the Tenant and Packerware, LLC, a Delaware limited liability company (the "Subtenant"), under which the Tenant will make certain payments in lieu of taxes for each year after issuance of the Series 2012 Bonds that the Project is exempt from ad valorem taxation.

D. The Board has found that under the provisions of K.S.A. 79-201a *Second*, the Project purchased with the proceeds of the Series 2012 Bonds is eligible for exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Series 2012 Bonds are issued, if proper application is made. The Issuer's governing body has further found that the Project should be exempt from ad valorem property taxes for a period of 10 years, subject to a payment in lieu of taxes for each year of the exemption, as more particularly described in the PILOT Agreement. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this resolution will have the meanings set forth in the Indenture and the Lease.

Section 2. **Authority to Cause the Project to Be Purchased and Constructed.** The Issuer is authorized to cause the Project to be acquired, constructed and equipped in the manner described in the Indenture and the Lease.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series 2012 Bonds, to be designated "Douglas County, Kansas Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project)" in the aggregate principal amount of not to exceed \$21,000,000, for the purpose of providing funds to pay the costs of acquiring, constructing and equipping the Project. The Series 2012 Bonds will be dated and bear interest, will be in the aggregate principal amount, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series 2012 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues from the Lease of the Project. The Series 2012 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in substantially the form approved in this resolution. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2012 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Issuer will acquire the Project and lease it to the Tenant according to the provisions of the Lease in substantially the form approved in this resolution. The sublease of the Project to the Subtenant is approved by the Issuer.

Section 6 **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series 2012 Bonds to AGNL Plastics, L.L.C., according to the terms and provisions of the Bond Purchase Agreement, in substantially the form approved in this resolution, among the Issuer, the Tenant, the Subtenant and AGNL Plastics, L.L.C., as Purchaser.

Section 7. **Execution of Bonds and Bond Documents.** The Chairman of the Board is authorized and directed to execute the Series 2012 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Chairman or member of the Board authorized by law to exercise the powers and duties of the Chairman in the Chairman's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to adoption of this resolution, with such corrections or amendments as the Chairman, the County Counselor, or other person lawfully acting in the absence of the Chairman may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents or certificates as may be necessary or desirable to carry out the purposes and intent of this resolution and the Bond Documents. The County Clerk or the Deputy County Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2012 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this resolution under the Issuer's corporate seal.

Section 8. **Tax Exemption; Payment in Lieu of Taxes.** The Project will be exempt from ad valorem property taxes for 10 years, commencing in the calendar year after the calendar year in which the Series 2012 Bonds are issued. The Subtenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Court of Tax Appeals. The Issuer is authorized to enter into the PILOT Agreement in substantially the form presented for review prior to adoption of this resolution.

Section 9. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project, and the net rentals generated under the Lease to the payment of the Series 2012 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2012 Bonds are paid or deemed to have been paid under the Indenture.

Section 10. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this resolution and to carry out and perform the duties of the Issuer with respect to the Series 2012 Bonds and the Bond Documents.

Section 11 **Effective Date.** This resolution shall take effect after its adoption by the Board.

ADOPTED by the Board of County Commissioners of Douglas County, Kansas this 22nd day of August, 2012.

**BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS**

[SEAL]

Mike Gaughan, Chairman

Nancy Thellman, Member

Jim Flory, Member

Attest:

Jameson D. Shew, County Clerk

CERTIFICATE OF COPY

I hereby certify that the attached copy is a true and correct copy of Resolution No. ____ of the Board of County Commissioners of Douglas County, Kansas, and that the signed original of such resolution is on file in my office.

[SEAL]

Jameson D. Shew, County Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS
HELD ON AUGUST 22, 2012**

The Board of County Commissioners (the "Board") Douglas County, Kansas, met in regular session at the usual meeting place in Lawrence, Kansas, at 6:30 p.m., the following members being present and participating, to-wit:

Absent:

The Chairman declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented for consideration a resolution entitled:

A RESOLUTION AUTHORIZING DOUGLAS COUNTY, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2012 (BERRY PLASTICS PROJECT) IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$21,000,000 FOR THE PURPOSES OF ACQUIRING, CONSTRUCTING AND EQUIPPING A MANUFACTURING AND WAREHOUSE FACILITY; AUTHORIZING EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE COUNTY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., ST. LOUIS, MISSOURI, AS TRUSTEE; AUTHORIZING THE COUNTY TO LEASE SUCH FACILITY TO AGNL PLASTICS, L.L.C.; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT WITH AGNL PLASTICS, L.L.C., AS PURCHASER OF THE BONDS; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Commissioner _____ moved that said resolution be adopted. The motion was seconded by Commissioner _____. Said resolution was duly read and considered, and upon being put, the motion for the adoption of said resolution was carried by the vote of the Board, the vote being as follows:

Aye: _____.

Nay: _____.

Thereupon, the Chairman declared said resolution duly adopted and the resolution was then duly numbered Resolution No. _____ and was signed by the Board.

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Board of County Commissioners of Douglas County, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

County Clerk

**AGNL PLASTICS, L.L.C.
AS TENANT**

**PACKERWARE, LLC
AS SUBTENANT**

**DOUGLAS COUNTY, KANSAS
AS ISSUER**

**AGNL PLASTICS, L.L.C.
AS PURCHASER**

BOND PURCHASE AGREEMENT

**[\$21,000,000]
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2012
(BERRY PLASTICS PROJECT)**

BOND PURCHASE AGREEMENT

[\$21,000,000]
DOUGLAS COUNTY, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2012
(BERRY PLASTICS PROJECT)
Dated: ISSUE DATE OF THE BONDS

THIS AGREEMENT entered into as of _____, 2012, among AGNL Plastics, L.L.C., a Delaware limited liability company (the "Tenant") Packerware, LLC, a Delaware limited liability company (the "Subtenant"), Douglas County, Kansas (the "Issuer") and AGNL Plastics, L.L.C., as purchaser (the "Purchaser"), collectively referred to herein as the "Parties."

Section 1. **Recitals.**

(a) The Issuer proposes to issue and sell the Bonds identified above (the "Bonds") to provide funds to acquire, construct and equip a manufacturing and warehouse facility (the "Project") located within Douglas County, Kansas, to be leased by the Issuer to the Tenant pursuant to a Lease dated as of the Issue Date (defined below) of the Bonds (the "Lease"). The Project will be subleased by the Tenant to the Subtenant pursuant to a Lease Agreement dated _____, 2012 (the "Sublease").

(b) Pursuant to the constitution and laws of the State of Kansas, including K.S.A. 12-1740 *et seq.*, as amended (the "Act"), the Bonds are limited obligations of the Issuer payable solely from the Trust Estate under the Indenture (hereinafter defined), including payments made by the Tenant pursuant to the Lease from payments made by the Subtenant pursuant to the Sublease. The Bonds will be dated as of the date of their issuance and delivery to the Purchaser (the "Issue Date"), will contain such other terms and provisions as are set forth in a resolution duly adopted by the Board of County Commissioners of the Issuer (the "Resolution"), and other proceedings and determinations related thereto as authorized and governed by the provisions of a Trust Indenture (the "Indenture") dated the Issue Date of the Bonds between the Issuer and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and Lease.

(c) In order to induce the Purchaser to enter into this Bond Purchase Agreement and to purchase the Bonds at a price and bearing interest at the rate or rates set forth in the Indenture, the Issuer, the Tenant and the Subtenant have joined in this Bond Purchase Agreement.

(d) The proceeds of the sale of the Bonds are to be applied to provide funds to pay Project Costs (as defined in the Indenture), all as set forth in the Lease, Resolution and Indenture.

Section 2. **Purchase, Sale and Closing.**

Upon fulfillment of the terms and conditions set forth herein, the Purchaser will purchase the Bonds from the Issuer, and the Issuer will sell the Bonds to the Purchaser. The aggregate purchase price for the Bonds will be \$[21,000,000], without accrued interest, payable at the Closing (defined below) in immediately available funds to the Trustee, for the account of the Issuer. The Bonds shall be issued under and secured as provided in the Indenture, and the Bonds shall have the maturities and interest rates and be subject to redemption as set forth in the Indenture, a copy of which is attached hereto as *Exhibit A*. The closing (the "Closing") will be at the offices of Gilmore & Bell, P.C., Wichita, Kansas at 10:00 a.m., prevailing local time, on [Closing Date], or at such other place or other date or time as may be agreed to by the Parties. The Bonds will be delivered to the Purchaser in registered form as one certificate in the principal amount of \$[21,000,000], unless otherwise requested by the Purchaser, at least 48 hours before Closing.

Section 3. **Issuer's Representations.**

The Issuer makes the following representations as of the Closing, all of which will continue in effect subsequent to the Closing:

(a) The Issuer is a political subdivision duly organized and existing under the laws of the State of Kansas.

(b) The governing body of the Issuer did adopt the Resolution; it has been approved and signed by a duly authorized official of the Issuer, and it is presently in full force and effect and has not been amended or modified.

(c) The Issuer has full power and authority to execute and deliver the Indenture, the Lease, the Bond Purchase Agreement and any and all other documents reasonably necessary in connection with the Indenture, the Lease and the Bond Purchase Agreement (the "Issuer Documents"); the Issuer Documents have been duly executed and delivered by the Issuer in the manner authorized, and the Bonds have been issued and constitute legal, valid and binding special obligations of the Issuer in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principles of equity or the exercise of judicial discretion.

(d) The execution, delivery and performance of the Issuer Documents will not conflict with or constitute on the part of the Issuer a material breach or default under any agreement, indenture or instrument known to it to which the Issuer is a party or by which it is bound.

(e) The Issuer has duly and validly authorized the taking on its behalf of any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Resolution and the Issuer Documents.

(f) There is not now pending or, to the knowledge of the officials of the Issuer, threatened any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or

contesting or questioning (i) the validity of the Bonds, (ii) the proceedings or authority under which they are issued, (iii) the existence of the Issuer, (iv) the authority of the Issuer to enact the Resolution or enter into the Issuer Documents, or (v) the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds.

(g) Any certificate signed by an official of the Issuer and delivered to the Purchaser shall be deemed a representation by the Issuer to the Purchaser as to the truth of the statements made in such certificate.

(h) Written notices complying with the provisions of K.S.A. 12-1749c and K.S.A. Supp. 12-1749d (relating to ad valorem property tax exemptions) were given in a timely manner to each unified school district and taxing jurisdiction in which the Project is located. Prior to the granting of the property tax exemption, an analysis of the costs and benefits of such exemption was prepared for the Issuer's governing body which included the effect of the exemption on state revenues, and a public hearing on the granting of the exemption was held by the governing body of the Issuer. Notice of the public hearing was published once at least seven days prior to the hearing in the official newspaper of the Issuer, and indicated the purpose, time and place of the hearing.

(i) Written notices complying with the provisions of K.S.A. 1741b were given in a timely manner to the City of Lawrence, Kansas and the City of Lecompton, Kansas.

Section 4. Representations of the Tenant and the Subtenant.

(a) The Tenant makes the following representations for the sole benefit of the Issuer as of the Closing, all of which will continue in effect subsequent to the Closing:

(i) The Tenant is a duly formed limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of Kansas.

(ii) The Tenant has full power and authority to enter into, execute and deliver the Lease, the Sublease, the Payment in Lieu of Taxes Agreement and this Bond Purchase Agreement (collectively, the "Tenant Documents"), and to perform its obligations thereunder, all of which have been duly authorized by all proper and necessary company action, and no consent or approval of parties not signatories to this Bond Purchase Agreement or of any public authority other than the Issuer is necessary to carry out the same.

(iii) The execution, delivery and performance by the Tenant of the Tenant Documents will not conflict with or constitute a material violation or breach of or a default under its articles of organization or operating agreement, or any mortgage, indenture, deed of trust, contract, instrument or agreement binding on it or affecting its property, or to Tenant's knowledge any provision of law or order, rule, regulation, ordinance or decree of any court, government or governmental body having jurisdiction over the Tenant or any of its property.

(iv) To the actual knowledge of the member of the Tenant signing this Bond Purchase Agreement, there is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Tenant, its officers or property, challenging the validity of the Tenant Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Tenant of obligations thereunder, or challenging the acquisition or operation of the Project. Further, no litigation, proceeding, or investigation is pending or, to the knowledge of the officer of the Tenant signing this Bond Purchase Agreement, threatened, against the Tenant, its officers or property except (i) that arising in the normal course of its business operations, and being defended by or on behalf of the Tenant, in which the probable ultimate recovery and estimated defense costs and expenses, in the opinion of the Tenant's management, will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Tenant, would not, in the opinion of the Tenant's management, materially and adversely affect the Tenant's operations or condition, financial or otherwise.

(b) The Subtenant makes the following representations as of the Closing, all of which will continue in effect subsequent to the Closing:

(i) The Subtenant is a duly formed limited liability company existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in Kansas.

(ii) The Subtenant has full power and authority to enter into, execute and deliver the Sublease, the Payment in Lieu of Taxes Agreement and this Bond Purchase Agreement (collectively, the "Subtenant Documents"), and to perform its obligations thereunder, all of which have been duly authorized by all proper and necessary corporate action, and no consent or approval of parties not signatories to this Bond Purchase Agreement or of any public authority other than the Issuer is necessary to carry out the same.

(iii) The execution, delivery and performance by the Subtenant of the Subtenant Documents will not conflict with or constitute a material violation or breach of or a default under its articles of organization or operating agreement, or any mortgage, indenture, deed of trust, contract, instrument or agreement binding on it or affecting its property, or to the knowledge of the Subtenant any provision of law or order, rule, regulation, ordinance or decree of any court, government or governmental body having jurisdiction over the Subtenant or any of its property.

(iv) To the actual knowledge of the member of the Subtenant signing this Bond Purchase Agreement, there is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Subtenant, its officers or property, challenging the validity of the Subtenant Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Subtenant of obligations thereunder, or challenging the acquisition or operation of the Project. Further, no litigation, proceeding, or investigation is pending or, to the knowledge

of the officer of the Subtenant signing this Bond Purchase Agreement, threatened, against the Subtenant, its officers or property except (i) that arising in the normal course of the its business operations, and being defended by or on behalf of the Subtenant, in which the probable ultimate recovery and estimated defense costs and expenses, in the opinion of the Subtenant's management, will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Subtenant, would not, in the opinion of the Subtenant's management, materially adversely affect the Subtenant's operations or condition, financial or otherwise.

Section 5. Purchaser's Representations.

The Purchaser makes the following representations for the sole benefit of the Issuer as of the Closing, all of which will continue in effect subsequent to the Closing:

(a) Purchaser, pursuant to all necessary company action, is authorized to purchase the Bonds and to execute and perform this Bond Purchase Agreement.

(b) Purchaser is knowledgeable and experienced in financial and business matters and is capable of evaluating investment merit and risks associated with its purchase of the Bonds. Purchaser has been furnished and has reviewed the provisions of the Resolution, the Indenture, the Lease and the Sublease relating to the authorization of and security for payment of the Bonds. Prior to the execution hereof Purchaser also obtained and examined such financial records and information and conducted such investigations as it has deemed necessary in order to enable itself to fully evaluate the terms and provisions of the Bonds, of the Resolution, and of the Indenture and Lease authorizing their issuance and providing for the payment thereof and the financial and investment merits and risks associated with the purchase of the Bonds. On the basis of such information materials and Purchaser's investigation, Purchaser has made the decision to purchase the Bonds and has not relied upon any representations of the Issuer or any of its officers or employees with respect to the Project, the Tenant or security for payment of the Bonds.

(c) Purchaser is purchasing the Bonds as an investment for its own account and not with a view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended. Purchaser acknowledges that (1) the Bonds will not be registered under the Securities Act of 1933, as amended or any applicable state securities law, (2) the Bonds may not be transferred unless such transfer will not cause a violation of the Securities Act of 1933, as amended, or any applicable state securities law and that (3) language consistent with the foregoing restrictions will appear in the registration and transfer provisions of the Indenture.

(d) Purchaser acknowledges that no official statement or other offering document has been prepared in connection with the sale of the Bonds.

Section 6. **Representations to Survive Closing.**

The representations, warranties, agreements, and indemnities of the Issuer, the Tenant, the Subtenant and the Purchaser contained herein will survive the Closing and any investigation made by or on behalf of the Issuer, the Purchaser, the Tenant or the Subtenant of any matters described in, or related to, the transactions contemplated hereby and by the Lease and the Sublease.

Section 7. **Conditions of Closing.**

The Purchaser's obligations to purchase the Bonds are subject to fulfillment of the following conditions at or before Closing:

- (a) The representations of the Issuer, the Tenant and the Subtenant hereunder must be true on and as of the Closing date and must be confirmed by certificates dated as of the Closing;
- (b) Neither the Issuer nor the Tenant nor the Subtenant has defaulted in the performance of any of their respective covenants hereunder;
- (c) The Purchaser must receive at the Closing:
 - (i) an opinion of Bond Counsel, dated as of the Closing, in form and substance satisfactory to the Purchaser and its counsel;
 - (ii) an opinion of counsel for the Tenant, dated as of the Closing, in form and substance satisfactory to Bond Counsel, the Subtenant and its counsel, and the Purchaser and its counsel confirming the Tenant's representations as set forth in *Section 4(a)* of this Bond Purchase Agreement;
 - (iii) an opinion of counsel for the Subtenant, dated as of the Closing, in form and substance satisfactory to Bond Counsel, to the Tenant and its counsel, and to the Purchaser and its counsel confirming the Subtenant's representations as set forth in *Section 4(b)* of this Bond Purchase Agreement;
 - (iv) an opinion of counsel for the Issuer, dated as of the Closing, in form and substance satisfactory to Bond Counsel and to the Purchaser and its counsel, confirming the Issuer's representations set forth in *Section 3* of this Bond Purchase Agreement;
 - (v) a certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser and its counsel, of an authorized official of the Issuer dated the date of the Closing to the effect that (A) each of the representations of the Issuer set forth in *Section 3* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Issuer set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with; and (B) no litigation is pending, or to such official's knowledge, threatened, to restrain

or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, the proceedings or authority under which they are issued, the existence of the Issuer, the authority of the Issuer to adopt the Resolution or enter into the Indenture, the Lease or the Bond Purchase Agreement, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds, and (C) that none of the proceedings authorizing issuance of the Bonds or execution and delivery of the bond documents has been repealed, revoked or rescinded;

- (vi) a certificate or certificates, satisfactory in form and substance to Bond Counsel, to Subtenant and its counsel, and to the Purchaser and its counsel, of authorized officers of the Tenant, dated the date of Closing to the effect that (A) each of the representations of the Tenant set forth in *Section 4(a)* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Tenant set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with as of such time; and (B) insofar as the persons signing such certificate or certificates are aware, after reasonable investigation, since the date of the Bond Purchase Agreement, there has been no material adverse change in the business, properties or financial condition of the Tenant or the results of operations of the Tenant;
- (vii) a certificate or certificates, satisfactory in form and substance to Bond Counsel, to Tenant and its counsel, and to the Purchaser and its counsel, of authorized officers of the Subtenant, dated the date of Closing to the effect that (A) each of the representations of the Subtenant set forth in *Section 4(b)* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Subtenant set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with as of such time; and (B) insofar as the persons signing such certificate or certificates are aware, after reasonable investigation, since the date of the Bond Purchase Agreement, there has been no material adverse change in the business, properties or financial condition of the Subtenant or the results of operations of the Subtenant;
- (viii) such additional documentation as Bond Counsel, the Purchaser or its counsel may reasonably request to evidence the satisfaction at or prior to Closing of all conditions then to be satisfied; and
- (ix) all conditions to Purchaser's obligation to close as "Buyer" under that Agreement of Purchase and Sale dated September 9, 2011 with Subtenant, as seller, shall have been satisfied as set forth in that agreement.

(d) At Closing, there shall not have been any adverse change in the business, property or financial condition of the Tenant or Subtenant from that furnished to the Purchaser which, in the

judgment of the Purchaser, is material and makes it inadvisable to proceed with the sale of the Bonds.

Section 8. Events Permitting Purchaser to Terminate.

The Purchaser may terminate its obligation to purchase the Bonds at any time before Closing, if any of the following occur:

(a) Any legislative, executive or regulatory action or court decision which, in the judgment of the Purchaser, casts sufficient doubt on the legality of obligations such as the Bonds so as to materially impair the marketability or lower the market price thereof;

(b) Any action by the Securities and Exchange Commission or other agency which would require registration of the Bonds under the Securities Act of 1933, as amended, or qualification of the Trust Indenture under the Trust Indenture Act of 1939, as amended;

(c) Any restriction on trading in securities, or any banking moratorium, or the inception or escalation of any war or major military hostilities which, in the judgment of the Purchaser, substantially impairs the ability of the Purchaser to purchase the Bonds; or

(d) Any development involving a prospective change in or affecting particularly the business, operations or properties of the Tenant or the Subtenant which, in the reasonable judgment of the Purchaser, materially impairs the investment quality of the Bonds.

If the Purchaser terminates its obligations to purchase the Bonds because any of the conditions specified hereunder shall not have been fulfilled at or before the Closing, such termination shall not result in any liability on the part of the Purchaser.

Section 9. Notices and Other Actions.

All notices, demands and formal actions hereunder will be in writing mailed, telegraphed or delivered to:

The Issuer: Douglas County, Kansas
Douglas County Courthouse, 2nd Floor
1100 Massachusetts Street
Lawrence, Kansas 66044

The Tenant AGNL Plastics, L.L.C.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 883-4157
Fax No.: (212) 883-4141
Attn: Gordon J. Whiting

With a copy to: AGNL Manager II, Inc.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 692-2296
Fax No.: (212) 867-6448
Attn: Joseph R. Wechselblatt

With a copy to: Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
Washington, D.C. 20005-3314
Phone No.: (202) 469-4943
Fax No.: (202) 312-9411
Attn: Michele E. Williams, Esquire

The Subtenant Packerware, LLC
c/o Berry Plastics Corporation
101 Oakley Street
Evansville, Indiana 47710
Phone No.: (812) 306-2764
Fax No.: (812) 492-9391
Attn: General Counsel

The Purchaser AGNL Plastics, L.L.C.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 883-4157
Fax No.: (212) 883-4141
Attn: Gordon J. Whiting

With a copy to: AGNL Manager II, Inc.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 692-2296
Fax No.: (212) 867-6448
Attn: Joseph R. Wechselblatt

With a copy to: Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
Washington, D.C. 20005-3314
Phone No.: (202) 469-4943
Fax No.: (202) 312-9411
Attn: Michele E. Williams, Esquire

Section 10. **Successors.**

This Bond Purchase Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns of Tenant.

Section 11. **Applicable Law.**

This Bond Purchase Agreement is governed by, and interpreted under, the laws of the state of Kansas.

Section 12. **Execution in Counterpart.** This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

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IN WITNESS WHEREOF, the Tenant, the Subtenant, the Issuer and the Purchaser, intending to be legally bound, have each caused their duly authorized representatives to execute and deliver this Bond Purchase Agreement as of the date first above written.

THE TENANT

AGNL Plastics, L.L.C.

By: AGNL Manager II, Inc., its manager

By: _____
Gordon J. Whiting, President

THE SUBTENANT

Packerware, LLC

By: _____
Title:

THE ISSUER

Douglas County, Kansas

By: _____
Chairman, Board of County Commissioners

[SEAL]

Attest:

County Clerk

THE PURCHASER

AGNL Plastics, L.L.C.

By: AGNL Manager II, Inc., its manager

By: _____
Gordon J. Whiting, President

Date signed: _____

EXHIBIT A
[TRUST INDENTURE]

DOUGLAS COUNTY, KANSAS

AS ISSUER

AND

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
ST. LOUIS, MISSOURI**

AS TRUSTEE

TRUST INDENTURE

DATED AS OF THE ISSUE DATE OF THE BONDS

**[\$21,000,000]
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2012
(BERRY PLASTICS PROJECT)**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of the Issue Date of the Bonds described herein (the "Indenture"), between the Douglas County, Kansas (the "Issuer"), and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the "Trustee");

WITNESSETH:

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

WHEREAS, pursuant to such authorization, the Issuer's governing body has adopted a resolution authorizing the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project), in the principal amount of \$[21,000,000] (the "Bonds"), for the purpose of acquiring, constructing, improving and equipping certain facilities (the "Project" as hereinafter more fully described), and authorizing the Issuer to lease the Project to AGNL Plastics, L.L.C., a Delaware limited liability company (the "Tenant"); and

WHEREAS, pursuant to such resolution, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Bonds as hereinafter provided, and (ii) to enter into a Lease of even date herewith (the "Lease"), between the Issuer and the Tenant, under which the Original Proceeds shall be used to acquire the Project and pursuant to which Issuer shall lease the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to make this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of, premium, if any, and interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Original Purchaser thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee and its successors and assigns, and grant to the Trustee and its successors and assigns a security interest in the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to wit:

(a) The real property or interests therein situated in Douglas County, Kansas, described in *Schedule I* attached hereto and constituting the Land (as defined herein), with all Improvements (as defined herein)

now or hereafter located thereon, to the extent and subject to the limitations provided in the Lease, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining.

(b) All right, title and interest of the Issuer in, to and under the Lease (except the Issuer's right to indemnity thereunder), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Lease (except for the rights of the Issuer to receive moneys for its own account under the Lease); provided that the pledge and assignment hereby made shall not impair or diminish the obligations of the Issuer under the provisions of the Lease.

(c) All moneys and securities from time to time held by the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the Issuer, by the Tenant or by anyone in their behalf, or with their written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and assigns;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for (i) the equal and proportionate benefit, protection and security of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds (herein defined) over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the Issuer shall pay, or cause to be paid, the principal of, premium, if any, and interest on all the Bonds, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in *Article XIII* hereof), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS

Section 101. **Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Indenture, the capitalized words and terms used in this Indenture and in the Lease shall have the meanings assigned in the Glossary attached hereto as *Appendix B*, unless some other meaning is plainly intended.

Section 102. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations, trusts and corporations, including public bodies, as well as natural persons.

(b) Wherever in this Indenture 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 Indenture as a whole and not to any particular Article, Section or subdivision.

(d) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as "Douglas County, Kansas Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project)." The total principal amount of Bonds that may be issued hereunder is hereby expressly limited to the \$[21,000,000] of Series 2012 Bonds.

Section 202. Limited Nature of Obligations.

(a) The Bonds and the interest thereon shall be limited obligations of the Issuer payable solely and only from the net earnings and revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease (including, in certain circumstances, Bond proceeds and income from the temporary investment thereof and proceeds from sale of the Project, insurance proceeds and condemnation awards), and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owner(s) of Bonds, as provided in this Indenture. The Bonds and the interest thereon shall not be a debt or general obligation of the Issuer or the State, or any municipal corporation thereof, and neither the Bonds, the interest thereon, nor any judgment thereon or with respect thereto, are payable in any manner from tax revenues of any kind or character. The Bonds shall not constitute an indebtedness or a pledge of the faith and credit of the Issuer, the State or any municipal corporation thereof, within the meaning of any constitutional or statutory limitation or restriction.

(b) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom

as hereinabove provided. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 203. Denomination, Numbering and Dating of Bonds.

(a) The Bonds shall be issued as one fully registered Bond in the denomination of \$[21,000,000]. The Bonds shall be substantially in the form set forth in *Article IV* of this Indenture. The Bonds shall be numbered in such manner as the Trustee shall determine.

(b) The Bonds shall be dated as provided in this Indenture . The Bonds shall bear interest from their effective date of registration. The effective date of registration shall be the Interest Payment Date next preceding the date of authentication thereof by the Trustee, unless such date of authentication shall be an Interest Payment Date, in which case the effective date of registration shall be as of such date of authentication, or unless the date of authentication shall be prior to the first Interest Payment Date for such series of Bonds, in which case the effective date of registration shall be the dated date of such series of Bonds; provided, however, that if payment of the interest on any Bonds of any series shall be in default at the time of authentication of any Bond certificates issued in lieu of Bonds surrendered for transfer or exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

Section 204. Method and Place of Payment of Bonds. Payment of interest on each Bond shall be made by the Paying Agent on each Payment Date to the person appearing on the registration books of the Issuer maintained by the Trustee as the registered owner thereof by electronic transfer to such Owner pursuant to the instructions attached as Schedule 204 hereto, unless changed by the Owner upon written notice given to the Paying Agent by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank ABA routing number and account number to which such Owner wishes to have such transfer directed. Final payment of principal and redemption premium, if any, on all Bonds shall be made by electronic transfer as provided above upon the presentation and surrender of the certificate(s) representing such Bonds at the stated maturity or earlier required redemption thereof at the principal office of the Paying Agent.

Section 205. Execution and Authentication of Bonds.

(a) Bond certificates shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon. In case any officer whose signature or facsimile thereof appears on any Bond certificates shall cease to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond certificate may be signed by such persons as at the actual time of the execution of such Bond certificate shall be the proper officers to sign although on the date of issuance of such Bond such persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in *Article IV* hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed. Such executed Certificate of Authentication upon any Bond certificate shall be conclusive evidence that the Bonds described in such Bond certificate have been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond certificate shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee, but it shall not be necessary that the same officer or employee

sign the Certificate of Authentication on all of the Bond certificates that may be delivered hereunder at any one time.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of the Bonds as provided in this Indenture.

(b) Bonds may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender of the certificate(s) representing such Bonds to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner(s) of Bonds or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds new Bond certificate(s), registered in the name of the transferee, of any denomination or denominations authorized by this Indenture in an aggregate principal amount equal to the principal amount of such Bonds, of the same series and maturity and bearing interest at the same rate. In the event that any Owner(s) of Bonds fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner(s) of Bonds sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to any Owner(s) of Bonds.

(c) In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bond certificates in accordance with the provisions of this Indenture. All Bond certificates surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee. The Issuer or the Trustee may make a charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid by the Owner(s) of Bonds before any such new Bond certificate shall be delivered. Neither the Issuer nor the Trustee shall be required to make any such exchange or transfer of Bonds on or after the Record Date preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) Any proposed transfer of Bonds shall be made by the Trustee only upon delivery to the Trustee, the Issuer and the Tenant of an opinion of counsel to the proposed transferor either (1) that the proposed transfer is a part of a transaction exempt from the application of the Securities Act of 1933, as amended (the "1933 Act"), or (2) that the transfer is a part of a transaction that is in compliance with the registration provisions of the 1933 Act, which opinion shall be in form and substance acceptable to both the Trustee and the Tenant.

(e) All of the duties of the Trustee set forth in this *Section 206* may be performed by any co-trustee or co-paying agent appointed by the Trustee, to the extent specified in the instrument appointing such co-trustee or co-paying agent.

Section 207. Persons Deemed Owners of Bonds. The person in whose name any Bond shall be registered as shown on the registration books required to be maintained by the Trustee by this Article shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of, or on account of the principal of and premium, if any, and, interest on any such Bond shall be made only to or upon the order of such registered Owner or a duly constituted legal representative. 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.

Section 208. **Authorization of Series 2012 Bonds.**

(a) There shall be initially issued and secured pursuant to this Indenture, a series of Bonds in the aggregate principal amount of \$[21,000,000] for the purpose of providing funds to pay Project Costs, which series of Bonds shall be designated the "Douglas County, Kansas, Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project)." The Bonds shall be issued as one registered certificate in the aggregate principal amount of \$[21,000,000], shall be dated the Issue Date of the Bonds, shall become due on the Principal Payment Date (subject to prior redemption as hereinafter provided in *Article III*) and shall bear interest from their effective date of registration or the Interest Payment Date to which interest has been paid, at the Applicable Interest Rate.

(b) Interest on the Bonds shall be payable to the Owners thereof in accordance with the provisions of *Article II* and *Appendix A* hereof.

(c) The Trustee is hereby designated as the Issuer's Paying Agent for the payment of the principal of, premium, if any, and interest on the Bonds.

(d) The Bonds shall be substantially in the form and manner set forth in *Article IV* hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

- (1) An original or certified copy of the resolution enacted by the Issuer's governing body authorizing the issuance of the Bonds and the execution of this Indenture and the Lease.
- (2) An original executed counterpart of this Indenture.
- (3) An original executed counterpart of the Lease.
- (4) An opinion of Bond Counsel to the effect that the Bonds constitute valid and legally binding obligations of the Issuer and that the interest on the Bonds is exempt from Kansas income taxation, subject to such limitations and restrictions as shall be described therein.
- (5) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(e) When the documents specified in subsection (d) of this Section shall have been filed with the Trustee, and when the certificate representing the Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Bonds to or upon the order of the Original Purchaser thereof, but only upon payment to the Trustee of the purchase price of the Bonds. The Original Proceeds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in *Article V* hereof.

Section 209. **Reserved.**

Section 210. **Reserved.**

Section 211. **Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond certificate shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate

and deliver a new Bond certificate of like series, date and tenor as the Bond certificate mutilated, lost, stolen or destroyed. In the case of any mutilated Bond certificate, such mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond certificate, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity reasonably satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond certificate the Issuer may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Bond certificate, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer 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.

Section 212. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or the certificates of which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be canceled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender of the certificates thereof to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee. The Trustee shall execute a certificate in triplicate describing the Bonds so delivered or destroyed, and shall file executed counterparts of such certificate with the Issuer and the Tenant.

ARTICLE III

REDEMPTION OF BONDS

Section 301. **Redemption of Bonds Generally.** The Bonds shall be subject to redemption and tender prior to maturity in accordance with the terms and provisions of this Article.

Section 302. **Redemption and Tender of Series 2012 Bonds.** The Bonds shall be subject to redemption and tender as follows:

(a) *Extraordinary Optional Redemption.* In the event of a Change of Circumstances, the Bonds shall be subject to redemption and payment prior to the stated maturity thereof, upon instructions from the Tenant to the Issuer, the Trustee and the Subtenant, on any date at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium, provided all of the Bonds are so redeemed and paid according to their terms.

(b) *Optional Redemption.* Bonds shall be subject to redemption and payment prior to maturity as a whole, upon instructions from the Tenant to the Issuer, the Trustee and the Subtenant, on any date on or after January 1, 2023, at the redemption price of the par value of the principal amount thereof, without premium or penalty

(c) *Mandatory Tender.*

(i) Upon the earlier to occur of (i) the Principal Payment Date of the Bond, or (ii) at Owner's sole written election on any date on or after January 1, 2023, Owner shall tender the Bond to the Trustee for cancellation on the Principal Payment Date or on the tender date set forth in the written notice delivered to the Trustee, as applicable.

(ii) On the date that both of the following events have occurred: (A) the delivery of a Termination Notice (as defined in the Sublease) by Subtenant to Tenant after a condemnation at the Land and (B) Tenant's receipt of the Termination Amount (as defined in the Sublease), Owner shall be required to tender the Bond to the Trustee for cancellation.

(iii) On the date that both of the following events have occurred: (A) the delivery of a Termination Notice (as defined in the Sublease) by Subtenant to Tenant after a casualty at the Land and (B) Tenant's receipt of the Termination Amount (as defined in the Sublease), Owner shall be required to tender the Bond to the Trustee for cancellation.

(iv) Following the termination of the Sublease by Tenant after an Event of Default under the Sublease by Subtenant, at Tenant's sole written election on any date after such termination of the Sublease (whether before or after January 1, 2022, Owner shall tender the Bond to the Trustee for cancellation on the tender date set forth in the written notice delivered to the Trustee.

Section 303. **Selection of Bonds to be Redeemed.** Bonds shall be redeemed or tendered only in the entire Outstanding principal amount thereof.

Section 304. **Trustee's Duty to Redeem Bonds.** The Trustee shall call bonds for redemption immediately upon receipt of written advice from the Tenant or the Owner that the event giving rise to redemption has occurred, and stating the redemption date. Upon receipt by the Trustee of such written advice, if required, and upon its own initiative if not required, the Trustee shall give at least 30 days' written notice of redemption to the Owner(s) of Bonds as provided herein. The Trustee shall call Bonds for optional or extraordinary optional redemption and payment as herein provided and shall give notice of redemption as provided in *Section 305* hereof upon receipt by the Trustee and Issuer at least 45 days prior to the proposed redemption date (unless waived) of the written redemption instructions of the Tenant. Such instructions shall specify the principal amount of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption.

Section 305. **Notice of Redemption.** Notice of the call for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing by first class mail, postage prepaid, a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the date of redemption, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds to be redeemed, the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the redemption date. A copy of each such notice of redemption shall be provided to any authorized co-paying agent appointed by the Trustee.

Section 306. **Effect of Call for Redemption.** Prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, accrued interest thereon to the redemption date and the redemption premium, if any. Upon the deposit of such funds or Government Securities, and notice having been given as provided in *Section 305* hereof, 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, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

Section 307. **Trustee's Duty to Cancel Tendered Bonds.** All Bonds tendered to the Trustee in accordance with the provisions of *Section 302(c)* hereof shall be deemed to have been paid in full and shall be cancelled by the Trustee as provided in *Section 212* hereof.

ARTICLE IV

FORM OF BONDS

Section 401. **Forms Generally.** The Bonds, and the Trustee's certificate of authentication to be endorsed thereon shall be, respectively, in substantially the form set forth in *Appendix A*. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

Section 402. **Form of Bond Counsel's Approving Opinion.**

Bond Counsel's approving opinion with respect to the authorization and issuance of the Bonds shall be substantially in form acceptable to Bond Counsel and the Original Purchaser and, if printed on the Bond certificates, shall be preceded by the following certificate:

I, the undersigned, County Clerk of Douglas County, Kansas hereby certify that the following is a true and correct copy of the complete final legal opinion of Gilmore & Bell, P.C., Bond Counsel, on the within Bond and the series of which said Bond is a part, except that it omits the date of such opinion, that said legal opinion was manually executed and was dated and issued as of the date of delivery of and payment for such Bonds, and is on file with The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri.

(facsimile signature)

County Clerk of Douglas County, Kansas

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. **Creation of Project Fund.** There is hereby established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "Douglas County, Kansas Project Fund (Berry Plastics Project)."

Section 502. **Deposits into the Project Fund.** The following funds shall be paid over to and deposited by the Trustee into the Project Fund, as and when received:

- (a) The proceeds from the sale of the Bonds.
- (b) Any earnings accrued on the investment of moneys in the Project Fund and required to be deposited into the Project Fund pursuant to *Section 702* hereof.
- (c) Except as otherwise provided herein or in the Lease, any other money received by or to be paid to the Trustee from any other source for the purchase or construction of the Improvements, or

payment of Costs of Issuance, when accompanied by directions by the Tenant that such moneys are to be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs in accordance with the provisions of *Article V* of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions. If the Issuer so requests, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer.

(b) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and upon request, the Trustee shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Tenant.

(c) Upon completion of the Improvements and payment of all costs and expenses incident thereto, any balance remaining in the Project Fund shall, at the direction of the Tenant, be transferred to the Subtenant as a partial reimbursement for payment of Costs of Issuance.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Creation of the Debt Service Fund. There is hereby authorized to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "Douglas County, Kansas Debt Service Fund for Taxable Industrial Revenue Bonds (Berry Plastics Project)" (herein called the "Debt Service Fund"). Notwithstanding anything herein to the contrary, any deposits to and payments from the Debt Service Fund shall be subject to the provisions of the Direct Pay Agreement.

Section 602. Deposits into the Debt Service Fund. The Trustee shall deposit into the Debt Service Fund, as and when received, the following:

(a) All Basic Rent payable by the Tenant to the Issuer specified in *Section 3.1* of the Lease.

(b) All interest and other income derived from investments of Debt Service Fund moneys as provided in *Section 702* hereof.

(c) All other moneys received by the Trustee under and pursuant to any of the provisions of the Lease, except Additional Rent, or when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Debt Service Fund.

Section 603. Application of Moneys in the Debt Service Fund.

(a) Moneys in the Debt Service Fund shall be expended solely for the payment of the principal of, premium, if any, and interest on the Outstanding Bonds as the same mature and become due or upon the redemption thereof prior to maturity.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Debt Service Fund to pay the principal of, premium, if any, and interest on the Bonds as the same

become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal, premium, if any, and interest.

(c) The Trustee, upon written direction of the Issuer and the Tenant, shall use any excess moneys in the Debt Service Fund (other than investment earnings credited to such account) and any moneys paid to the Trustee for deposit in the Debt Service Fund pursuant to *Section 17.3* of the Lease to redeem Outstanding Bonds, interest accruing thereon prior to such redemption, and redemption premium, if any, in accordance with and to the extent permitted by *Article III* hereof so long as the Tenant is not in Default with respect to payments of Basic Rent under the Lease and to the extent said moneys are in excess of amounts required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment.

(d) Any amount remaining in the Debt Service Fund after the principal of, premium, if any, and interest on the Bonds shall have been paid in full or provision made therefor in accordance with *Article XIII* hereof, shall be paid to the Tenant by the Trustee.

Section 604. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal of, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 605. Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due, either at its stated maturity or at the date called for redemption, or the Trustee is unable to locate the Owner for the payment of accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Owner(s) of Bonds for the payment of such Bond and accrued interest shall cease and be completely discharged, and the Trustee shall hold such funds, without interest, for the benefit of such Owner(s) of Bonds, who shall thereafter be restricted exclusively to such funds for any claim on, or with respect to, such Bond and interest. If any Bond shall not be presented for payment within four years following the date when it becomes due, whether by maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee shall repay to the Tenant the funds theretofore held by it for payment of such Bond and interest, and such Bond and interest shall thereafter be an unsecured obligation of the Tenant, subject to the defense of any applicable statute of limitation, and the Owner thereof shall be entitled to look only to the Tenant for payment, and then only to the extent of the amount so repaid, and the Tenant shall not be liable for any additional interest thereon.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for the account of any fund or account under any provision of this Indenture, and all moneys deposited with or paid to the Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except interest earned on investments made pursuant to *Section 702* of this Indenture and such other interest as may be agreed upon.

Section 702. **Investment of Moneys in Funds.** Moneys held in the Project Fund and the Debt Service Fund shall be separately invested and reinvested by the Trustee at the written direction of the Tenant in Investment Securities. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held, and except as otherwise specifically provided in this Indenture, the interest accruing thereon and any profit realized from such Investment Securities shall be credited to and accumulated in such fund or account, and any loss resulting from such Investment Securities shall be charged to such fund or account. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any fund or account is insufficient for the purposes of such fund or account. In determining the balance in any fund or account, investments in such fund or account shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or short-term investment department. The Trustee shall have no liability for any loss experienced on any investment made pursuant to this Section.

Although the Issuer and the Tenant recognize that they may obtain brokerage confirmations or written statements containing comparable information at no additional cost, the Issuer and the Tenant agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement of investments is provided to it. No statement needs to be provided, however, for any Fund and Account for any month in which no investment activity occurred during such month in such Fund and Account. The Trustee may rely on the Authorized Tenant Representative investment directions as to both the suitability and legality of the directed investments.

Section 703. **Record Keeping.** The Trustee shall maintain records demonstrating compliance with the provisions of this Article and with the provisions of *Article VI* for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. **Payment of Principal of, Premium, if any, and Interest on the Bonds.** The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project (as well as moneys held for such purposes hereunder) as described herein, promptly pay or cause to be paid the principal of, premium, if any, and interest on the Bonds as the same become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use its best efforts to cause the Project to be continuously leased as a revenue and income producing undertaking, and that, should there be a default under the Lease with the result that the right of possession of the Project is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Owner(s) of Bonds to protect the rights and security of the Owner(s) of Bonds and shall diligently proceed in good faith and, if requested by the Owner in writing, use its best efforts to secure another tenant for the Project to the end that at all times sufficient rents, revenues and receipts will be derived by Issuer from the Project to provide for payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. **Authority to Execute Indenture and Issue Bonds.** The Issuer covenants that it is duly authorized under the constitution and laws of the State to execute this Indenture, to issue the Bonds and

to pledge and assign the Trust Estate in the manner and to the extent herein set forth (including the creation of a security interest therein); that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 803. **Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto.

Section 804. **Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer hereby acknowledges that this Indenture constitutes a security agreement with respect to the Trust Estate, and authorizes the Trustee to file financing statements to perfect its security interest in the Trust Estate, or any part thereof. The Issuer covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. **Maintenance, Taxes and Insurance.** The Issuer represents that pursuant to the provisions of the Sublease, the Subtenant has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of the Subtenant.

Section 806. **Inspection of Project Books.** The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. **Enforcement of Rights Under the Lease.** The Issuer covenants and agrees that it shall enforce all of its rights and all of the obligations of the Tenant (at the expense of the Tenant) under the Lease to the extent necessary to preserve the Project in good order and repair, and to protect the rights of the Trustee and the Owner(s) of Bonds hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease. The Trustee as assignee of the Lease in its name or in the name of the Issuer shall enforce all rights of the Issuer and all obligations of the Tenant under and pursuant to the Lease for and on behalf of the Owner(s) of Bonds, whether or not the Issuer is in default hereunder.

Section 808. **Possession and Use of Project.** So long as not otherwise provided in this Indenture, the Tenant shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

ARTICLE IX

REMEDIES ON DEFAULT

Section 901. Acceleration of Maturity in Event of Default.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of Owner(s) of Bonds owning not less than 25% in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Tenant, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest on the Bonds, together with all Default Administration Costs, all overdue installments of Basic Rent and Additional Rent under the Lease and all other sums then payable by the Issuer under this Indenture shall either be paid or provision satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee may in its discretion, and shall upon the written consent of Owner(s) of Bonds owning at least 51% in aggregate principal amount of the Bonds Outstanding, rescind such declaration and annul such default in its entirety.

(c) In case of any rescission, then and in every such case the Issuer, the Trustee and the Owner(s) of Bonds shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 902. Exercise of Remedies by the Trustee.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and if requested to do so in writing by Owner(s) of Bonds owning not less than 25% of the aggregate principal amount of Bonds Outstanding, and if indemnified to its satisfaction and satisfactory provision has been offered as to payment of Default Administration Costs and third-party liability, shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding or exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owner(s) of Bonds to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) All rights of action under this 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 necessity of joining as plaintiffs or defendants any Owner(s) of Bonds, and any recovery of judgment shall be for the equal benefit of all Outstanding Bonds.

(c) In any litigation with the Tenant or the Guarantor, or both, after an Event of Default, the Trustee may, after obtaining the written approval of Owner(s) of Bonds owning at least 51% of the aggregate principal amount of Bonds Outstanding, enter into an agreement to settle the litigation upon such terms as the Trustee in its sole discretion determines to be in the best interest of the Owner(s) of Bonds, even if such settlement involves selling the Land and Improvements for less than the amount needed to pay the Owners of the Bonds Outstanding the full amounts of the principal and accrued interest on the Bonds.

(d) Upon the occurrence of any Event of Default, Owner and the Issuer, at Owner's sole and absolute direction and discretion, may tender the Bond to the Trustee for cancellation, the Lease and the Sublease shall terminate as provided therein and the Issuer shall forfeit and transfer to Owner all right, title, and interest in and to the Land, Improvements and the Project as more fully described in Section ___ of the Lease.

Section 903. **Limitation on Exercise of Remedies by Owner(s) of Bonds.** No Owner(s) of Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) Owner(s) of Bonds owning at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iv) satisfactory indemnity and provision for payment of Default Administration Costs and third-party liability shall have been offered to the Trustee and (v) the Trustee shall thereafter fail or refuse to exercise the powers granted in this section to institute such action, suit or proceeding in its own name; and such knowledge and request are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owner(s) of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bonds then Outstanding.

Section 904. **Right of Owner(s) of Bonds to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, and upon providing the Trustee indemnification satisfactory to it as provided above, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and Trustee shall have the right to decline to follow such direction if the Trustee shall in good faith, and upon the advice of counsel, determine that proceedings so directed would expose the Trustee to personal liability.

Section 905. **Remedies Cumulative.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owner(s) of Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owner(s) of Bonds hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or by the Owner(s) of Bonds, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 906. **Waivers of Events of Default.** The Trustee shall, upon the written request of Owner(s) of Bonds owning at least 51% in aggregate principal amount of all the Bonds then Outstanding and satisfaction of the conditions set forth in *Section 901(b)*, waive any Event of Default hereunder. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Owner(s) of Bonds shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 907. **Application of Money Received after Event of Default.** If the principal of all Bonds shall have become due and payable after the occurrence of an Event of Default, all moneys thereafter received from the Tenant, from sale or reletting of the Project shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee and any other moneys owed to the Trustee hereunder, be applied:

first: to the payment of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available is not sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds, and then to the payment of any interest due and payable after maturity on the Bonds, ratably, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

second: to the payment of the principal of the Bonds, ratably, without preference or priority of any obligation over any other obligation.

Whenever moneys are to be applied by the Issuer or the Trustee pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee in its sole discretion determines, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Trustee in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability to any Owner(s) of Bonds or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and moneys are applied in accordance with such provisions of this Indenture. Whenever the Trustee exercises such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to any Owner(s) of Bonds of any unpaid Bond until the Bond certificate(s) representing Bonds owned are surrendered to the Trustee as Bond Registrar for appropriate endorsement, or for cancellation if fully paid.

ARTICLE X

THE TRUSTEE

Section 1001. **Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts in the manner in which a corporate trustee ordinarily would perform said trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent corporate trust officer would exercise or use under the circumstances, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) Prior to the occurrence of an Event of Default and after the cure of all Events of Default which may have occurred, the Trustee's duties and responsibilities shall include only those expressly set forth in this Trust Indenture and those rights, duties, responsibilities, and obligations which are reserved to or imposed upon the Issuer under this Trust Indenture and the Lease, excepting only such of those rights,

duties, responsibilities, and obligations as may only be properly and lawfully exercised by or imposed upon the Issuer.

(b) Upon the occurrence of an Event of Default the Trustee shall be and is hereby authorized to bring appropriate action for judgment or such other relief as may be appropriate and such action may be in the name of the Trustee or in the name of the Issuer and Trustee jointly; but in such case, neither the Issuer nor the Trustee shall have any obligation for any fees and expenses of such action except out of any funds available by reason of the ownership of the Project and moneys available under this Trust Indenture and the Lease. In addition, the Trustee may file such proof of claim and such other documents as may be necessary and advisable in order to have the claims of the Trustee and the Owner(s) of Bonds relative to the Bonds or the obligations relating thereto allowed in any judicial proceeding.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers. The Trustee shall be entitled to rely upon the opinion or advice of counsel, who may be counsel to the Trustee, Issuer or the Tenant, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof.

(d) The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any ordinance, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture, the Lease believed by it to be genuine and correct and to have been signed, presented or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is an Owner(s) of Bonds, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in substitution thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Chairman of the Issuer's Board of County Commissioners or the Authorized Tenant Representative as sufficient evidence of the facts therein contained, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect any and all of the Project and all books, papers and records of the Issuer and Tenant pertaining to the Project and the Bonds, and to make such notes and copies as may be desired.

(i) The Trustee shall not be required to give any bond or surety with respect to the execution of its trusts and powers hereunder or otherwise with respect to the Project.

(j) The Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purpose of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(k) The Trustee shall not be required to take notice of, or be deemed to have notice of, any default hereunder or under the Lease, except the failure by the Issuer to cause to be made any of the payments required to be made under the Lease or in accordance with *Article VI* hereof, or the failure by the Issuer to cause compliance by the Tenant with the provisions of *Article VI* of the Lease, unless the Trustee shall have been specifically notified in writing of such default by the Issuer or by Owner(s) of Bonds owning at least 25% in aggregate principal amount of all Bonds then Outstanding.

(l) The Trustee may inform the Owner(s) of Bonds of environmental hazards that the Trustee has reason to believe exist with respect to the Project, the Land or the Improvements, and the Trustee shall have the right to take no further action with respect thereto, and, in such event, no fiduciary duty shall exist which imposes any obligation for further action by the Trustee with respect to the Project, the Land, the Improvements, the enforcement of any remedies hereunder or under this Lease, the Trust Estate, or any portion thereof, if, in the reasonable opinion of the Trustee, such action would subject the Trustee to environmental or other liability for which the Trustee has not received indemnity satisfactory to it.

(m) Except as provided in Section ___ of the Lease, the Trustee covenants that it will not sell or otherwise part with or encumber the Issuer's fee title interest in the Project at any time during the Term of the Lease.

(n) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Issuer and the Tenant shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer and the Tenant elect to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Tenant agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1002. Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent. The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary costs, charges and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to

compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs, expenses and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Subtenant for the payment of all fees, charges and expenses of the Trustee and any Paying Agents.

Section 1003. **Notice to Owner(s) of Bonds if Default Occurs.** If an Event of Default occurs, of which the Trustee is aware and of which it is required to take notice, the Trustee shall give written notice thereof to the Owner(s) of Bonds, as shown by the bond registration books required to be maintained by the Trustee and kept at the principal office of the Trustee.

Section 1004. **Intervention by the Trustee.** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Owner(s) of Bonds, the Trustee may intervene on behalf of the Owner(s) of Bonds and shall do so if requested in writing by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and if provided with indemnity satisfactory to the Trustee.

Section 1005. **Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and 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 Trustee hereunder without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. **Resignation of Trustee.** The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Tenant to take effect not sooner than 90 days after its delivery, whereupon the Issuer, with the consent of the Tenant, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified. In the event the Issuer and the Tenant do not promptly designate a successor trustee, then the Trustee shall, at the Subtenant's expense, have the right to petition a court of competent jurisdiction for the appointment of a successor.

Section 1007. **Removal of Trustee.** As long as no Default or Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Issuer or the Tenant; provided, that such removal shall not be effective unless and until a successor trustee is appointed and qualified, and provided further than such removal shall not become effective until after 60 days from the date written notice of such proposed removal is given to the Trustee by first class mail. The Issuer or the Tenant, concurrently with giving notice to the Trustee, shall give notice by first class mail of the proposed removal of the Trustee to all Owner(s) of Bonds. Unless Owner(s) of Bonds owning at least 51% in principal amount of Bonds then Outstanding object in writing to the proposed removal of the Trustee, such removal shall become effective from the date specified in the notices, provided that the successor trustee shall have been qualified and have accepted the duties and responsibilities of the Trustee as of such date. The Trustee may be removed at any time by the written direction of Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding.

Section 1008. **Qualifications of Successor Trustee.** Every successor Trustee appointed pursuant to the provisions of this Article shall be a trust company or bank in good standing, qualified to accept such trust and acceptable to the Issuer and the Tenant.

Section 1009. **Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Tenant an

instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 1010. **Right of Trustee to Pay Taxes and Other Charges.** In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, and the Tenant has failed after 30 days written notice to make such payment, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owner(s) of Bonds hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of, premium, if any, or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. **Reserved.**

Section 1012. **Annual Accounting.** The Trustee shall render an annual accounting to the Tenant, to the Issuer upon request, and to any Owner(s) of Bonds requesting the same in writing and remitting reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. **Recordings and Filings.** At the direction of the Owner of the Bonds, the Issuer shall cause the Lease and all amendments to the Lease or appropriate memoranda thereof and all appropriate financing statements under the Uniform Commercial Code and other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owner(s) of Bonds and the rights of the Trustee hereunder. The Issuer hereby authorizes the Tenant or Bond Counsel to make any such filings for it. The Trustee shall cause to be filed continuation statements to the financing statements under the Uniform Commercial Code of the State, with the appropriate filing office of the State, in such manner as may be required by the Uniform Commercial Code of the State. The Subtenant shall be responsible for the reasonable fees and costs, including fees and costs of counsel or other experts, incurred by the Trustee in the preparation and filing of all continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial, amendment, or other filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings or any amendments or other changes to Article 9 of the Uniform Commercial Code of the State. The Trustee shall be fully protected in relying on information with respect to such initial filing delivered to it by or on behalf of the Issuer or the Tenant, as applicable, and descriptions in filing any continuation statements.

Section 1014. **Performance of Duties under the Lease.** The Trustee hereby accepts and agrees to perform, in such manner as is consistent with the terms of those instruments and this Indenture, all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. **Supplemental Indentures.** The Issuer and the Trustee may from time to time, with the prior written consent of any of the Owner(s) of Bonds, enter into such Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture. Any Supplemental Indenture under this Article which affects any rights of the Tenant shall not become effective unless and until the Tenant shall have consented in writing to the execution and delivery of such Supplemental Indenture.

ARTICLE XII

LEASE AMENDMENTS

Section 1201. **Lease Amendments.** The provisions of the Lease may be amended to the extent and upon the terms and conditions provided therein.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. **Satisfaction and Discharge of the Indenture.**

(a) When the principal of, premium, if any, and interest on all Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in *Section 1302* hereof, and provision shall also have been made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds, then the duties of the Trustee under this Indenture shall cease. Thereupon the Trustee shall discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Debt Service Fund required to be paid to the Tenant under *Section 603(d)* hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of, and interest accrued on, the Bonds. Notwithstanding anything otherwise provided herein, the provisions of this Indenture relating to compensation and indemnification of the Trustee shall survive satisfaction and discharge of the Indenture.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of, premium, if any, and interest due and payable upon all of the Bonds then Outstanding and all amounts required to be paid to the United States have been paid or such payment provided for in accordance with *Section 1302* hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall deem this

Indenture discharged. The Issuer is hereby further authorized to accept a certificate by the Trustee that the Owner of the Bonds has surrendered all Outstanding Bonds to the Trustee and directed that such Bonds be cancelled upon the books and records of the Trustee, and upon receipt thereof shall deem this Indenture discharged.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and the applicable premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities. As a condition to the Bonds being deemed paid, the Trustee shall have received an opinion of Bond Counsel to the effect that the conditions of this Section have been satisfied, and that the actions taken hereunder will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(b) Notwithstanding the foregoing, in the case of the redemption of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until proper notice of such redemption shall have been given in accordance with *Article III* of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds (including premium thereon, if any) and interest thereon shall be applied to and used solely for the payment of the particular Bonds (including premium thereon, if any) and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owner(s) of Bonds.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owner(s) of Bonds may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owner(s) of Bonds in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments

within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, number and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee.

(b) In determining whether the Owner(s) of Bonds owning the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Tenant or any affiliate of the Tenant shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Tenant; and for the purposes of this definition, "control" means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Bonds so owned which 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 Tenant or any affiliate of the Tenant.

Section 1402. **Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto, and the Owner(s) of Bonds, any right, remedy or claim under or with respect to this Indenture, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Tenant and the Owner(s) of Bonds as herein provided.

Section 1403. **Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, to the Notice Representative.

All notices given by 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 Issuer or the Tenant to the other shall also be given to the Trustee. The Issuer, the Trustee and the Tenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. **Suspension of Mail Service.** If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Trustee shall constitute a sufficient notice.

Section 1405. **Severability.** If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1406. **Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1407. **Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1408. **Electronic Transactions.** The issuance of the Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

(THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied.

DOUGLAS COUNTY, KANSAS

[SEAL]

By: _____

Name: Mike Gaughan

Title: Chairman, Board of County Commissioners

ATTEST:

Jameson D. Shew, County Clerk

"ISSUER"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the _____ day of _____, 2012 by Mike Gaughan, Chairman of the Board of County Commissioners of Douglas County, Kansas, a political subdivision of the State of Kansas.

[SEAL]

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf and such signature to be attested by its duly authorized officers, and its corporate seal to be applied, all as of the date first above written.

**The Bank of New York Mellon
Trust Company, N.A.**
St. Louis, Missouri,
as Trustee

[SEAL]

By: _____
Name:
Title:

ATTEST:

Title:

"TRUSTEE"

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____ of The Bank of New York Mellon Trust Company, N.A., a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

Notary Public

My Appointment Expires:

SCHEDULE I

DESCRIPTION OF PROPERTY

The following property acquired by Douglas County, Kansas (the "Issuer") in connection with the issuance of its Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project) (the "Bonds"):

(a) The following described real estate in Douglas County, Kansas:

Lot 2, Rockwall Farms Addition 2nd Plat, an addition in Douglas County, Kansas, per that certain recorded Plat of Subdivision recorded on April 8, 2011, at Book 18, Page 483, in the Office of the Register of Deeds of Douglas County, Kansas.

said real property constituting the "Land" as defined in the Lease entered into by the Issuer concurrently with the issuance of the Bonds (the "Lease"), subject to the following ("Permitted Encumbrances"):

[here insert permitted encumbrances from final title insurance policy]

(b) All buildings, building additions, improvements, machinery and equipment now or hereafter constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Bonds and which constitute Improvements as referred to in the Lease, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this Schedule I together constituting the "Project" as referred to in the Lease.

SCHEDULE 204

[to be provided]

APPENDIX A

FORM OF BONDS

FACE OF THE BOND

No. ____

\$_____

United States of America

State of Kansas

Douglas County, Kansas

Taxable Industrial Revenue Bond

Series 2012

(Berry Plastics Project)

Douglas County, Kansas (the "Issuer"), hereby promises to pay, solely out of the sources hereinafter specified, AGNL PLASTICS, L.L.C., the registered owner hereof, or registered assigns (an "Owner"), the principal sum of

_____ DOLLARS

plus interest on the unpaid balance hereof accruing from the Issue Date until paid, in lawful money of the United States of America, at the rates and payable as follows:

- a. From the Issue Date (herein defined) of this Bond to the first Adjustment Date (herein defined), interest shall accrue and be paid in advance on the principal amount of this Bond at the Initial Rate (herein defined) commencing on the First Payment Date (herein defined) and continuing on each Interest Payment Date (herein defined) thereafter until the first Adjustment Date.
- b. On and after the first Adjustment Date, interest shall accrue and be paid in advance on the principal amount of this Bond on each Interest Payment Date at the Initial Rate, plus any CPI Adjustment Payment, until the Final Maturity Date (herein defined).
- c. One final payment in the amount of the entire unpaid principal balance hereunder (including any accrued and unpaid interest) shall be paid on the Final Maturity Date.

The "Adjustment Date" means the first anniversary of the Issue Date, and each first anniversary thereafter until the entire principal balance is paid in full.

The "Average CPI" means the average of the CPI for the three most recent calendar months ending immediately prior the applicable Adjustment Date for which the CPI has been published on or before the 45th day preceding the Adjustment Date.

The "Beginning CPI" means the Average CPI for the three calendar months corresponding to the three most recent calendar months occurring one year prior to the Adjustment Date.

"CPI" means the index known as United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, United States City Average, All Items, Not Seasonally Adjusted (1982-84=100), or the successor index that most closely approximates the CPI as determined by the Sublease (hereinafter described) for the payment of Basic Rent thereunder.

The "CPI Adjustment Payment" shall mean an adjustment to the Interest Payment for increases in the CPI during the most recent one year period immediately preceding each Adjustment Date. When the Average CPI exceeds the Beginning CPI, the Interest Payment payable immediately prior to the applicable Adjustment Date shall be multiplied by a fraction, the numerator of which shall be the difference between the Average CPI and the Beginning CPI, and the denominator of which shall be the Beginning CPI. An amount equal to the lesser of (i) the product of such multiplication or (ii) 2% of the Interest Payment payable immediately prior to the applicable Adjustment Date shall be added to the Interest Payment payable immediately prior to the applicable Adjustment Date. If the Average CPI is the same or less than the Beginning CPI, the CPI Adjustment Payment is zero. The Owner shall provide notice to the Trustee of the amount of the CPI Adjustment Payment on or before the tenth (10th) business day prior each Adjustment Date.

The "First Payment Date" means the Issue Date.

The "Final Maturity Date" shall mean the 20th anniversary of the Issue Date.

The "Initial Rate" means 9.10% per annum, computed on the basis of 360 days per year.

The "Interest Payment" means the interest payable on the outstanding principal amount of this Bond at the Initial Rate on each Interest Payment Date, plus any CPI Adjustment Payment.

The "Interest Payment Date" means the first day of January, March, May, July, September and November in each year, commencing as of November 1, 2012.

The "Issue Date" means _____, 2012.

Payments of principal of and redemption premium, if any, on this Bond shall be made in lawful money of the United States of America, upon the presentation and surrender of this Certificate at the principal offices of The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the "Paying Agent" and "Trustee"). Interest shall be paid on this Bond to the registered Owner (the "Owner") hereof, by electron transfer in accordance with the instructions set forth in the within mentioned Indenture, or in accordance with instructions furnished in writing by such registered Owner to the Paying Agent at the close of business on the 15th day of the month next preceding the applicable Interest Payment Date (the "Record Date"), until the principal sum is paid, unless the Bonds represented by this certificate shall have been previously called for redemption and payment as hereinafter set forth.

This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated " Douglas County, Kansas, Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project)," in the aggregate original principal amount of \$[21,000,000] (the "Bonds"), issued for the purpose of providing funds to pay the costs of acquiring, constructing and equipping a certain manufacturing and warehouse facility (the "Project"), to be leased by the Issuer to AGNL Plastics, L.L.C., a Delaware limited liability company (the "Tenant"), under the terms of a Lease dated as of the Issue Date of the Bonds, between the Issuer and the Tenant (said Lease, as amended and supplemented from time to time in accordance with

the provisions thereof, being herein called the "Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 *et seq.*, as amended, and pursuant to proceedings duly had by the governing body of the Issuer.

The Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of the Issue Date of the Bonds (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the Issuer and the Trustee. Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Owner(s) of Bonds, and the terms upon which the Bonds are issued and secured.

REDEMPTION OF BONDS

Extraordinary Optional Redemption. In the event of a Change of Circumstances (as defined in the Indenture), shall be subject to redemption and payment prior to the stated maturity thereof, upon instructions from the Tenant to the Issuer, the Trustee and the Subtenant, on any date at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium, provided all of the Bonds are so redeemed and paid according to their terms.

Optional Redemption. Bonds shall be subject to redemption and payment prior to maturity as a whole, upon instructions from the Tenant to the Issuer, the Trustee and the Subtenant, on any date on or after January 1, 2023, at the redemption price of the par value of the principal amount thereof, without premium or penalty .

Mandatory Tender.

(i) Upon the earlier to occur of (i) the Principal Payment Date of the Bond, or (ii) at Owner's sole written election on any date on or after January 1, 2023, Owner shall tender the Bond to the Trustee for cancellation on the Principal Payment Date or on the tender date set forth in the written notice delivered to the Trustee, as applicable.

(ii) On the date that both of the following events have occurred: (A) the delivery of a Termination Notice (as defined in the Sublease) by Subtenant to Tenant after a condemnation at the Land and (B) Tenant's receipt of the Termination Amount (as defined in the Sublease), Owner shall be required to tender the Bond to the Trustee for cancellation.

(iii) On the date that both of the following events have occurred: (A) the delivery of a Termination Notice (as defined in the Sublease) by Subtenant to Tenant after a casualty at the Land and (B) Tenant's receipt of the Termination Amount (as defined in the Sublease), Owner shall be required to tender the Bond to the Trustee for cancellation.

(iv) Following the termination of the Sublease by Tenant after an Event of Default under the Sublease by Subtenant, at Tenant's sole written election on any date after such termination of the Sublease (whether before or after January 1, 2022, Owner shall tender the Bond to the Trustee for cancellation on the tender date set forth in the written notice delivered to the Trustee.

When any Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books

maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. All Bonds so called for redemption will cease to bear interest on the specified redemption date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture. All Bonds tendered to the Trustee shall be deemed to have been paid in full and shall be cancelled on the books and records of the Trustee.

The Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Project as described in the Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Tenant will sublease the Project to Packerware, LLC, a Delaware limited liability company (the "Subtenant") under a Lease Agreement dated [_____] (as supplemented and amended in accordance with the terms thereof the "Sublease"). The Bonds and the interest thereon do not constitute a debt or general obligation of the Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds do not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Lease, the Tenant has agreed to make, or to cause the Subtenant to make, Basic Rent payments in an amount equal to debt service on the Bonds.

No Owner of Bonds shall have the right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond certificate is transferable, as provided in the Indenture, only upon the registration books of the Issuer kept for that purpose at the above mentioned office of the Bond Registrar and Paying Agent by the Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or such Owner's duly authorized attorney, and thereupon a new Bond certificate in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Tenant has agreed to pay, or to cause the Subtenant to pay, as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of certificates mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, Issuer has caused this Bond certificate to be executed in its name by the manual or facsimile signature of the Chairman of the County Commission and attested by the manual or facsimile signature of its County Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused the Bonds to be dated as of Issue Date of the Bonds.

DOUGLAS COUNTY, KANSAS

(Facsimile Seal)

By: _____
Chairman

ATTEST:

County Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond certificate evidences ownership of the Douglas County, Kansas, Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project), as described herein and in the within-mentioned Trust Indenture. The date of authentication of this Bond is _____.

**The Bank of New York Mellon
Trust Company, N.A.**
St. Louis, Missouri,
Trustee

By: _____
Authorized Signature

(FORM OF ASSIGNMENT)

For value received, the undersigned hereby sells, assigns and transfers unto

Print or Type Name and Address of Transferee

the Bonds represented by this certificate and all rights thereunder, and hereby authorizes the transfer of the within Bond on the books kept by the Bond Registrar and Paying Agent for the registration and transfer of Bonds.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Bank]

(Name of Eligible Guarantor Institution)

By: _____

Title: _____

Signature must be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15)

THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, OR IN A TRANSACTION EXEMPT FROM THE APPLICATION OF FEDERAL AND STATE SECURITIES LAWS.

APPENDIX B

GLOSSARY OF WORDS AND TERMS

"Act" means K.S.A. 12-1740 *et seq.*, as amended.

"Applicable Interest Rate" means the rate of interest per annum accruing on the Bonds on any Payment Date, taking into account any CPI Adjustment Payments, all as more specifically set forth in Appendix A attached hereto and incorporated herein by reference.

"Authorized Tenant Representative" means Gordon J. Whiting, or such other person as is designated to act on behalf of the Tenant as evidenced by written certificate furnished to Trustee, containing the specimen signature of such person and signed on behalf of the Tenant by an authorized officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Tenant Representative.

"Bond" or "Bonds" means the Series 2012 Bonds.

"Bond Counsel" means the firm of Gilmore & Bell, P.C. or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to Issuer and Tenant.

"Bond Registrar" means the Trustee.

"Business Day" means a day which is not a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

"Change of Circumstances" means the occurrence of any of the following events:

(1) title to, or the temporary use of, all or any substantial part of the Land or the Project shall be condemned by any authority exercising the power of eminent domain to the extent that the Project is untenable or the efficient utilization of the Project by the Subtenant is substantially impaired;

(2) title to such portion of the Land is found to be deficient or nonexistent to the extent that the Project is untenable or the efficient utilization of the Project by the Subtenant is substantially impaired;

(3) substantially all of the Improvements are damaged or destroyed by fire or other casualty and the Subtenant elects not to repair or rebuild the Project in accordance with the terms of the Sublease; or

(4) as a result of: (i) changes in the constitution of the State; or (ii) any legislative or administrative action by the State or any political subdivision thereof, or by the United States; or (iii) any action instituted in any court, the Lease shall become voidable or unenforceable, or impossible of performance without unreasonable delay, or in any other way by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon Issuer or Tenant.

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder by the United States Department of the Treasury.

"Completion Date" means the date of actual completion of the acquisition, purchase, construction and installation of the Improvements pursuant to the Lease.

"Construction Period" means the period from the beginning of acquisition or construction of Improvements to their Completion Date.

"Costs of Issuance" means any and all expenses of whatever nature incurred in connection with the issuance and sale of Bonds, including, but not limited to, underwriting fees and expenses, underwriting discount, initial fees of the Trustee, administrative fees or expenses of the Issuer, bond and other printing expenses and legal fees and expenses of Bond Counsel, Issuer's counsel and counsel for the Tenant.

"Debt Service Fund" means the "Douglas County, Kansas Debt Service Fund for Taxable Industrial Revenue Bonds (Berry Plastics Project)" created pursuant to *Section 601* of this Indenture.

"Event of Default" means an "Event of Default" as defined in the Lease.

"Government Securities" direct obligations of, and obligations fully and unconditionally guaranteed as to timely payment by, the United States government and any agency, instrumentality, or establishment of the United States government.

"Improvements" means all buildings, building improvements, machinery, equipment and fixtures purchased in whole or in part from the proceeds of the Bonds.

"Indenture" means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of *Article XI* of this Indenture.

"Interest Payment Date" means any date on which any interest is payable on any Bond. With respect to the Series 2012 Bonds, it means the Issue Date and thereafter the first day of January, March, May, July, September and November in each year, commencing as of November 1, 2012.

"Investment Contract" means an agreement to deposit all or any portion of the proceeds of the sale of the Bonds with a bank, with the deposits to bear interest at an agreed rate.

"Investment Securities" means any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Trustee pursuant to this Indenture:

(i) Government Securities;

(ii). Commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from S&P and Moody's, from which a rating is available in the highest investment category granted thereby;

(iii). Repurchase and reverse repurchase agreements collateralized with Government Securities, including those of the Trustee or any of its affiliates.

(iv). Investment in money market mutual funds having a rating in the highest investment category granted thereby from S&P or Moody's, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the

Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(v). Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the AA long-term ratings category or higher by S&P and Moody's or which are fully FDIC-insured.

"Issue Date" means the date when the Issuer delivers the Bonds to the Original Purchaser in exchange for the purchase price thereof. With respect to the Series 2012 Bonds, it means August [], 2012.

"Issuer" means the Douglas County, Kansas, a political subdivision of the State, and its successors and assigns.

"Land" means the real property (or interests therein) described in *Schedule I*.

"Lease" means the Lease delivered concurrently with this Indenture between the Issuer and the Tenant, as from time to time amended and supplemented in accordance with the provisions thereof and of *Article XII* of this Indenture.

"Notice Representative" means:

(1) With respect to the Tenant, its Authorized Tenant Representative at its Notice Address (as defined in the Lease).

(2) With respect to the Subtenant, the General Counsel of Berry Plastics Corporation at its Notice Address (as defined in the Lease).

(3) With respect to the Issuer, its duly acting clerk at its Notice Address (as defined in the Lease).

(4) With respect to the Trustee, any corporate trust officer at its Notice Address (as defined in the Lease).

"Original Proceeds" means all sale proceeds, including accrued interest, from sale of the Bonds to the Original Purchaser and all investment earnings credited to the Project Fund prior to the Completion Date.

"Original Purchaser" means AGNL Plastics, L.L.C., New York, New York.

"Outstanding" means, as of a particular date all Bonds issued, authenticated and delivered under this Indenture (including any Supplemental Indentures), except:

(a) Bonds canceled by the Trustee or delivered to the Trustee for cancellation pursuant to this Indenture;

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee and irrevocably pledged to such payment of redemption in accordance with the provisions of *Section 1302* of this Indenture; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

"Owner" means the owner of any Bond as shown on the registration books of the Trustee maintained as provided in this Indenture.

"Paying Agent" means the Trustee.

"Payment Date" means any Interest Payment Date or any Principal Payment Date.

"Permitted Encumbrances" means any mortgages, liens or other encumbrances specifically described in *Schedule I*; easements and rights-of-way of record at the time of conveyance of the Land to the Issuer, and any other title exceptions not affecting marketability or the usefulness of the Project to Tenant.

"Person" means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

"Principal Payment Date" means any date on which principal on any Bond is due and payable, whether at the stated maturity or earlier required redemption thereof. With respect to the Series 2012 Bonds, the Principal Payment Date is the 20th anniversary of the Issue Date.

"Project" means the Land and the Improvements, together with any Alternations.

"Project Costs" means those costs incurred in connection with acquisition of the Land, and the construction or installation of any Improvements, including:

(a) all costs and expenses necessary or incident to the acquisition of the Land and the Improvements;

(b) fees and expenses of architects, appraisers, surveyors, engineers and other professional consultants for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of acquisition, construction, preparation of plans, drawings and specifications and supervision of construction and installation, as well as for the performance of all other duties of architects, appraisers, surveyors, engineers and other professional consultants in relation to the acquisition, construction or installation of the Improvements or the issuance of Bonds;

(c) all costs and expenses incurred in constructing, acquiring or installing the Improvements;

(d) payment of interest actually incurred on any interim financing obtained from a lender unrelated to the Tenant for acquisition or performance of work on the Improvements prior to the issuance of the Bonds;

(e) the cost of the title insurance policies required by the Lease;

(f) Costs of Issuance.

"Project Fund" means the fund authorized and established with the Trustee pursuant to the Indenture and designated the " Douglas County, Kansas Project Fund (Berry Plastics Project), including the Project Account and the Costs of Issuance Account."

"Record Date" means the 15th day of the month preceding each Interest Payment Date, or if such date is not a Business Day, the Business Day immediately preceding such date.

"Rental Payments" means the aggregate of the Basic Rent and Additional Rent payments provided for pursuant to *Article III* of the Lease.

"Series 2012 Bonds" means the Douglas County, Kansas Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project) dated the Issue Date of the Bonds in the aggregate principal amount of \$[21,000,000].

"State" means the State of Kansas.

"Sublease" means that certain Lease Agreement dated _____, 2012 between the Tenant, as sublessor, and the Subtenant, as sublessee, for the use and operation of the Project.

"Subtenant" means Packerware, LLC, a Delaware limited liability company, as Subtenant under the Sublease.

"Supplemental Indenture" means any indenture supplementing or amending this Indenture entered into by the Issuer and the Trustee pursuant to *Article XI* of this Indenture.

"Tenant" means AGNL Plastics, L.L.C., a Delaware limited liability company, its successors and assigns.

"Trust Estate" means the Trust Estate described in the Granting Clauses of this Indenture.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, a banking corporation or association incorporated under the laws of the United States or one of the states thereof, in its capacity as trustee, bond registrar and paying agent, and its successor or successors serving as Trustee under this Indenture.

DOUGLAS COUNTY, KANSAS

AS ISSUER

AND

AGNL PLASTICS, L.L.C.

AS TENANT

LEASE

DATED AS OF THE ISSUE DATE OF THE BONDS

**[\$21,000,000]
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2012
(BERRY PLASTICS PROJECT)**

LEASE

TABLE OF CONTENTS

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LEASE

THIS LEASE, made and entered into as of the Issue Date of the Bonds described herein between Douglas County, Kansas (the "Issuer"), and AGNL Plastics, L.L.C. (the "Tenant").

WITNESSETH:

WHEREAS, the Issuer is a political subdivision, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Lease by and through its governing body; and

WHEREAS, the Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, particularly K.S.A. 12-1740 *et seq.*, as amended (the "Act"), and in order to provide for the economic development and welfare of Douglas County, Kansas and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State, has proposed and does hereby propose that it shall:

(a) Acquire the Project (as defined in the Indenture);

(b) Lease the Project to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and

(c) Issue, for the purpose of paying Project Costs (as defined in the Indenture), the Bonds under and pursuant to and subject to the provisions of the Act and the Indenture (herein defined), said Indenture being incorporated herein by reference and authorized by a resolution of the governing body of the Issuer; and

WHEREAS, the Tenant, pursuant to the foregoing proposals of the Issuer, desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Issuer and the Tenant do hereby covenant and agree as follows:

ARTICLE I

Section 1.1. **Definitions.** Capitalized terms not otherwise defined in this Lease shall have the meanings set forth in *Appendix B* to the Indenture. In addition to the words, terms and phrases defined in *Appendix B* to the Indenture and elsewhere in this Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth in the Glossary of Words and Terms attached as *Appendix B*, unless the context or use indicates another or different meaning or intent.

Section 1.2. **Representations and Covenants by the Tenant.** The Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) The Tenant is a Delaware limited liability company, duly organized and existing under the laws of said state, and is duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its members.

(b) Except as otherwise permitted herein, the Tenant shall (1) maintain and preserve its existence and organization as a limited liability company and its authority to do business in the State and to operate the Project; and (2) not initiate any proceedings of any kind whatsoever to dissolve or liquidate without (A) securing the prior written consent thereto of the Issuer and (B) making provision for the payment in full of the principal of and interest and redemption premium, if any, on the Bonds. If, at any time during the term of this Lease or the Indenture, the Tenant changes its state of organization, changes its form of organization, changes its name, or takes any other action which could affect the proper location for filing Uniform Commercial Code financing statements or continuation statements or which could render existing filings seriously misleading or invalid, the Tenant shall immediately provide written notice of such change to the Trustee, and thereafter promptly deliver to the Trustee such amendments and/or replacement financing statements, together with an Opinion of Counsel to the effect that such amendments and/or replacement financing statements have been properly filed so as to create a perfected security interest in the collateral securing the Indenture, and such additional information or documentation regarding such change as the Trustee may reasonably request.

(c) Neither the execution and/or delivery of this Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes in any material respect any provisions of its articles of organization or operating agreement, or conflicts in any material respect with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a material default (without regard to any required notice or the passage of any period of time) under any of the foregoing, or would result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates in any material respect any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) This Lease constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) The Tenant agrees to cause the Project to be operated by the Subtenant as a "facility," as that term is contemplated in the Act, from the date of the Issuer's acquisition of the Project to the end of the Term.

(f) The Tenant has obtained or will cause the Subtenant to obtain any and all permits, authorizations, licenses and franchises necessary to enable the Subtenant to operate and utilize the Project for the purposes for which it was leased by the Tenant under this Lease and by the Subtenant under the Sublease.

(g) After reasonable inquiry and investigation, the Tenant is not aware of (A) any Hazardous Substances generated from or located on the Project; (B) any prior use of the Land which might reasonably involve Hazardous Substances; or (C) any investigations, complaints or inquiries of any kind, from any source, concerning Hazardous Substances with respect to the Project or properties adjoining the Project.

(h) The Tenant cause the Subtenant to prohibit any Hazardous Activity in connection with the Project.

Section 1.3. Representations and Covenants by the Issuer. The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It is a political subdivision duly organized and existing under the constitution and laws of the State. Under the provisions of the Act and the Resolution, the Issuer has the power to enter into and perform the transactions contemplated by this Lease and the Indenture and to carry out its obligations hereunder and thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against, the Project, except for this Lease, the assignment of this Lease to the Trustee, any Permitted Encumbrances, any Impositions, and the pledge of the Project pursuant to the Indenture.

(c) Except as otherwise provided herein or in the Indenture, it will not during the Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance to be placed against, the Project, except Permitted Encumbrances, this Lease, any Impositions and the pledge of the Project pursuant to the Indenture.

(d) It has pledged the Project and the net rentals therefrom generated under the Lease to payment of the Bonds in the manner prescribed by the Act, and has duly authorized the execution and delivery of this Lease and the Indenture and the issuance, sale and delivery of the Bonds.

(e) It has notified or obtained the consent to and/or approval of the issuance of the Bonds by each municipal corporation and political subdivision the notification, consent or approval of which is required by the provisions of the Act.

ARTICLE II

Section 2.1. Granting of Leasehold. The Issuer by these presents hereby rents, leases and lets the Project unto the Tenant and the Tenant hereby rents, leases and hires the Project for the Basic Term from the Issuer, subject to any Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions hereinafter set forth.

ARTICLE III

Section 3.1. **Basic Rent.** The Issuer reserves and the Tenant covenants and agrees to pay Basic Rent to the Trustee, as assignee of the Issuer, for the account of the Issuer, for deposit in the Debt Service Fund, on each Basic Rent Payment Date. Basic Rent shall be payable at the principal office of the Trustee in immediately available funds on each Basic Rent Payment Date. Notwithstanding the foregoing, the parties hereto agree that Basic Rent shall be paid by the Subtenant on behalf of the Tenant pursuant to the terms of the Direct Pay Agreement and that all payments made by the Subtenant in accordance with the terms of the Direct Pay Agreement shall fully satisfy the Tenant's obligations under this Section 3.1.

Section 3.2. **Additional Rent.** Within 30 days after receipt of written notice thereof, the Tenant shall cause the Subtenant to pay any Additional Rent required to be paid pursuant to this Lease not already paid.

Section 3.3. **Prepayment of Basic Rent.** The Tenant may at any time prepay all or any part of the Basic Rent. Prepayments of Basic Rent will be applied to redemption of Bonds, including payment of redemption premium, as directed in writing by the Tenant, to the extent that Bonds are subject to optional redemption at the time of prepayment. Otherwise, prepayments of Basic Rent will be deposited in the Debt Service Fund to be applied to purchase of Bonds as provided in the Indenture, or to optional redemption of Bonds (including redemption premium and interest) at the earliest date on which Bonds are subject to optional redemption.

Section 3.4. **Deposit of Rent by the Trustee.** As assignee of the Issuer's rights hereunder, the Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Lease, the Indenture and the Direct Pay Agreement.

Section 3.5. **Acquisition of Bonds.** If the Tenant acquires any Outstanding Bonds, it may present the certificate(s) representing such part of the Bonds to the Trustee for cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced in the same manner as provided for prepayments by the Tenant of Basic Rent.

ARTICLE IV

Section 4.1. **Disposition of Original Proceeds; Project Fund.** The Original Proceeds shall be paid over to the Trustee for the account of the Issuer. The Trustee shall apply such Original Proceeds as provided in this Lease and the Indenture.

ARTICLE V

Section 5.1. **Acquisition of Land and Improvements.** The Tenant shall prior to or concurrently with the issuance of the Bonds, assign or cause to be conveyed to the Issuer by

warranty deed, subject to Permitted Encumbrances, the Land and Improvements. The Tenant shall also concurrently with such conveyance make provisions for the discharge or subordination to the interests acquired by the Issuer of any liens or encumbrances incurred by it in connection with the construction, installation or development of the Improvements, other than Permitted Encumbrances.

Section 5.2. Payment of Project Costs for Buildings and Improvements. The Issuer hereby agrees to pay for the acquisition of the Project, but solely from Original Proceeds of the Bonds as deposited in the Project Fund, and hereby authorizes and directs the Trustee to pay for the same upon receipt by the Trustee of a requisition certificate signed by the Authorized Tenant Representative in the form set forth as *Appendix A* hereto which is incorporated herein by reference.

The sole obligation of the Issuer under this paragraph shall be to cause the Trustee to make such disbursements upon receipt of such certificates and releases or waivers. The Trustee may rely fully on any such certificates and shall not be required to make any investigation in connection therewith.

Section 5.3. Personal Property . If no part of the purchase price of an item of personal property is paid from Original Proceeds deposited in the Project Fund pursuant to the terms of this Lease, then such item of machinery, equipment or personal property will not be considered a part of the Project.

Section 5.4. Project Property of the Issuer. The Project as fully completed, repaired, rebuilt, rearranged, restored or replaced by the Tenant or Subtenant under the provisions of this Lease and the Sublease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the Issuer.

ARTICLE VI

Section 6.1. Insurance . The Tenant covenants to cause the Project to be insured in accordance with the terms of the Sublease. [Modify Sublease provide that Issuer is named insured on liability insurance.]

Section 6.2. Evidence of Title. The Tenant shall furnish evidence of title in the form of a policy of owner's title insurance, insuring the Issuer's fee simple title to the Project, as of the date and time immediately prior to conveyance to the Issuer, subject to Permitted Encumbrances, in an amount equal to \$[21,000,000]. Such title insurance policy shall contain no exceptions, other than the title insurance company's standard printed exceptions, Permitted Encumbrances, and the encumbrance created by this Lease. The Issuer and the Tenant agree that any and all proceeds therefrom during the Basic Term (a) if received before the Bonds and interest thereon have been paid in full, shall be paid into and become a part of the Debt Service Fund, and (b) if received after the Bonds, redemption premium, if any, and interest thereon have been paid in full, shall belong and be paid to the Tenant.

ARTICLE VII

Section 7.1. **Impositions.** The Tenant shall, during the Term of this Lease, cause the Subtenant to bear, pay and discharge any and all Impositions in accordance with the terms of the Sublease. Notwithstanding the above, the Tenant or Subtenant shall have the right to contest any such imposition in accordance with the provisions of *Section 14* of the Sublease.

Section 7.2. **Ad Valorem Taxes.** The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds (except such property used for certain retail uses) is eligible to receive exemption from *ad valorem* taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has complied with certain notice, hearing and procedural requirements established by law, and proper application has been made. The Issuer represents that such notice, hearing and procedural requirements will have been complied with at the Issue Date. Subject to the provisions of *Section 7.3* of this Lease, and to the provisions of the Payment in Lieu of Taxes Agreement referred to therein, the Issuer will, at the Tenant's request, with information furnished by the Tenant and the Subtenant, make all necessary filings regarding the application for 100% *ad valorem* tax exemption for the full 10-year period in the calendar year following the calendar year in which the Bonds were issued, and will renew said application from time to time and take any other action as may be necessary to maintain such *ad valorem* tax exemption in full force and effect, in accordance with K.S.A. 79-201a, 79-210 *et seq.* and the requirements of the State Court of Tax Appeals. If it becomes necessary to litigate the issue of availability or applicability of the *ad valorem* tax exemption, the Issuer will cooperate fully with Tenant and Subtenant in pursuing such litigation, but all litigation costs and reasonable attorney fees must be paid by Tenant or Subtenant, either directly or as Additional Rent.

Section 7.3. **Payment in Lieu of Taxes.** The Tenant agrees to pay or to cause the Subtenant to pay to the Issuer payments in lieu of taxes on the Project for each year that the Project is exempt from *ad valorem* taxes and to pay as an Imposition hereunder taxes for any year in which the Project did not, or does not qualify, in accordance with the separate Payment in Lieu of Taxes Agreement delivered concurrently with this Lease.

ARTICLE VIII

Section 8.1. **Use of Project.** Subject to the provisions of this Lease and the Sublease, the Tenant and Subtenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall cause the Subtenant to comply in all material respects with all statutes, laws, ordinances, 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 or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Tenant shall cause the Subtenant to comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease and the Sublease. The Tenant shall pay or cause the Subtenant to pay all costs, expenses, claims, fines,

penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Tenant or Subtenant to comply with the provisions of this Article.

Section 8.2. Environmental Provisions.

(a) Tenant hereby covenants that it will cause the Subtenant and any other party occupying any part of the Project to comply with the provisions of *Section 10* of the Sublease regarding compliance with Environmental Laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided to the Issuer hereunder and in the Indenture, the Tenant hereby agrees to cause the Subtenant to indemnify and hold harmless the Issuer and the Trustee from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment, costs of investigation, consultants, testing, sampling, cleanup, or defense, and claims of any and every kind paid, incurred or suffered, with respect to, or as a direct or indirect result of, any Environmental Violation.

(c) The provisions of this *Section 8.2* shall survive the termination of this Lease or exercise of the Tenant's option to purchase the Project, except with respect to obligations which arise solely and exclusively as a result of the use, spill, release, leak, seepage or discharge of Hazardous Substances on the Land or the Project after the Project is no longer occupied by the Tenant.

ARTICLE IX

Section 9.1. Sublease of the Project.

(a) The Tenant may sublease or assign its interest in the Project with written notice to the Issuer. In the event of any such subleasing or assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder. The Sublease with the Subtenant is hereby approved.

(b) The Subtenant may further sublease or assign its interest in the Project in accordance with the provisions of *Section 21* of the Sublease. [Modify Sublease to provide for Issuer consent.]

ARTICLE X

Section 10.1. Repairs and Maintenance. The Tenant covenants and agrees that it will, during the Term of this Lease, cause the Tenant to keep and maintain the Project and all parts thereof in good condition and repair in accordance with the provisions of *Section 12* of the Sublease.

ARTICLE XI

Section 11.1. **Alterations and Improvements.** The Tenant and the Subtenant shall have and each is hereby given the right, at its sole cost and expense, to make such Alterations (as such term is defined in the Sublease) to the Project as the Tenant and/or Subtenant from time to time may deem necessary or advisable, provided however, the Tenant shall not make any Alteration which will adversely affect the intended use or structural strength or value of any part of the Project. All Alterations made by the Tenant or Subtenant pursuant to the authority of this Article 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, shall be deemed a part of the Project; provided, however, that additions of personal property of the Tenant or Subtenant, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant or Subtenant, as applicable.

ARTICLE XII

Section 12.1. **Securing of Permits and Authorizations.** The Tenant shall not do or permit the Subtenant or others under its control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been 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 this Lease.

Section 12.2. **Mechanic's Liens.** The Tenant shall not do or suffer anything to be done by the Subtenant or others under its control whereby the Project, or any part thereof, is encumbered by any mechanic's or other similar lien. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant, the Subtenant or anyone claiming by, through or under the Tenant or the Subtenant upon credit, and that no mechanic's or similar liens for any such labor, services or materials shall attach to or affect the reversionary or other estate of the Issuer in and to the Project, or any part thereof.

Section 12.3. **Contest of Liens.** Notwithstanding the above, the Tenant or Subtenant shall have the right to contest any such mechanic's or other similar lien in accordance with the provisions of *Section 14* of the Sublease.

Section 12.4. **Utilities.** All utilities and utility services used in, on or about the Project shall be contracted for by the Subtenant in its own name and the Tenant shall cause the Subtenant, at Subtenant's sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

ARTICLE XIII

Section 13.1. **Access to Project.** The Issuer, for itself and its duly authorized representatives and agents, including the Trustee, reserves the right to enter the Project at all reasonable times during usual business hours throughout the Term, upon reasonable notice, for the purpose of (a) examining and inspecting the same, (b) performing such work made necessary by reason of the Tenant's default under any of the provisions of this Lease, and (c) after an Event of Default, for the purpose of exhibiting the Project to prospective purchasers, lessees or mortgagees. The Issuer may, during the progress of said work mentioned in (b) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of such materials, supplies and equipment.

ARTICLE XIV

Section 14.1. **Option to Extend Basic Term.** The Tenant shall have and is hereby given the right and option to extend the Basic Term of this Lease for the Additional Term provided that (a) the Tenant shall give the Issuer written notice of its intention to exercise the option at least 30 days prior to the expiration of the Basic Term and (b) the Tenant is not in Default hereunder at the time it gives the Issuer such notice or at the time the Additional Term commences. In the event the Tenant exercises such option, the terms, covenants, conditions and provisions set forth in this Lease shall be in full force and effect and binding upon the Issuer and the Tenant during the Additional Term except that the Basic Rent during any extended term herein provided for shall be the sum of \$100.00 per year, payable in advance on the first Business Day of such Additional Term.

ARTICLE XV

Section 15.1. **Option to Purchase Project.** Subject to the provisions of this Article, the Tenant shall have the right and option to purchase the Project at any time during the Term hereof and for 120 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of the Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Purchase Date") shall neither be earlier than 30 days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Purchase Date unless all Defaults are cured upon payment of the purchase price specified in *Section 15.2*.

Section 15.2. **Quality of Title and Purchase Price.** If said notice of election to purchase is given, the Issuer shall sell and convey all of its interests in the Project to the Tenant on the Purchase Date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of conveyance to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the rights of any party having condemned or who is attempting

to condemn title to, or the use for a limited period of, all or any part of the Project, for a price determined as follows (which the Tenant agrees to pay in cash at the time of delivery of the Issuer's deed or other instrument or instruments of transfer of the Project to the Tenant as hereinafter provided):

(1) The full amount which is required to provide the Issuer and the Trustee with funds sufficient, in accordance with the provisions of the Indenture, to pay at maturity or to redeem and pay in full (A) the principal of all of the Outstanding Bonds, (B) all interest due thereon to date of maturity or redemption, whichever first occurs, and (C) all costs, expenses and premiums incident to the redemption and payment of said Bonds in full, plus

(2) \$100.00.

Nothing in this Article shall release or discharge the Tenant from its duty or obligation under this Lease to make any payment of Basic Rent or Additional Rent which, in accordance with the terms of this Lease, becomes due and payable prior to the Purchase Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by the Tenant prior to the Purchase Date.

Section 15.3. Closing of Purchase. On the Purchase Date the Issuer shall deliver to the Tenant its special warranty deed and/or other appropriate instrument or instruments of conveyance or assignment, properly executed and conveying the Project to the Tenant free and clear of all liens and encumbrances except as set forth in the preceding section above, or conveying such other title to the Project as may be acceptable to the Tenant, and the Tenant shall pay the full purchase price for the Project as follows: (a) the amount specified in clause (1) of *Section 15.2* shall be paid to the Trustee for deposit in the Debt Service Fund to be used to pay or redeem Bonds and the interest thereon as provided in the Indenture, and (b) the amount specified in clause (2) of said *Section 15.2* shall be paid to the Issuer; provided, however, nothing herein shall require the Issuer to deliver its appropriate instrument or instruments of assignment or conveyance to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied or adequate provision made for such performance and satisfaction. Upon the delivery to the Tenant of the Issuer's appropriate instrument or instruments of assignment or conveyance, payment of the purchase price by the Tenant and legal defeasance of the Bonds, this Lease shall *ipso facto* terminate, subject to the provisions of *Section 18.2* hereof.

Section 15.4. Effect of Failure to Complete Purchase. If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not effected on the Purchase Date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that if such purchase is not effected on the Purchase Date because the Issuer does not have or is unable to convey to the Tenant such title to the Project as the Tenant is required to accept, the Issuer shall use its best efforts to cure any such defect in its title to the Project. In the event the Issuer is unable to cure such defect in its title to the Project, or if the Issuer's failure to close would be a breach of its obligations hereunder, the Tenant shall have the right to cancel this Lease forthwith if, but only if, the principal of and interest on the Bonds and all costs incident to the redemption and payment of the Bonds

have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain acceptable title to the Project.

ARTICLE XVI

Section 16.1. **Casualty and Condemnation.** In the event of any Casualty at the Project or Condemnation of the Project, the provisions of *Section 17* of the Sublease shall control the disposition of any insurance or condemnation proceeds and the rebuilding or repair of the Project.

ARTICLE XVII

Section 17.1. **Change of Circumstances.** If at any time during the Basic Term, a Change of Circumstances occurs, then the Tenant shall have the option to purchase the Project pursuant to *Article XV* or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after the Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for pursuant to the Indenture.

ARTICLE XVIII

Section 18.1. **Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee (acting on behalf of the Issuer, as assignee of the Issuer's rights hereunder) may take any legal action, including but not limited to, one or more of the following remedial actions, all at the direction of the Owner of the Bonds:

(a) By written notice to the Tenant and Subtenant upon acceleration of maturity of the Bonds as provided in the Indenture, the Trustee acting on behalf of the Issuer may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under this Lease by the Tenant to be immediately due and payable as liquidated damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant.

(b) The Trustee acting on behalf of the Issuer may give the Tenant and Subtenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given and, if all Defaults have not then been cured on the date so specified, the Tenant's rights to possession of the Project shall cease, and this Lease shall thereupon terminate. The Trustee acting on behalf of the Issuer may thereafter re-enter and take possession of the Project and pursue all its available remedies, including sale of the Project and judgment against the Tenant for possession of the Project and/or all Basic Rent and Additional Rent then owing, including costs and attorney fees. In the alternative, the Issuer may, at the option of the Owner of the Bonds, transfer title to the Project to the Owner in full satisfaction of the debt.

(c) Without terminating the Term hereof, or this Lease, the Trustee acting on behalf of the Issuer may re-enter the Project or take possession thereof pursuant to legal

proceedings or any notice provided for by law and this Lease. The Issuer or the Trustee acting on behalf of the Issuer may refuse to re-enter or take possession of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

(d) Having elected to re-enter or take possession of the Project pursuant to *subsection 18.1(c)*, the Trustee acting on behalf of the Issuer may relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project shall be construed as an election to terminate this Lease, and no such re-entry or taking of possession shall relieve the Tenant of its obligation to pay or cause to be paid Basic Rent or Additional Rent (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. The Tenant shall continue to pay or cause to be paid the Basic Rent and Additional Rent provided for in this Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any, of reletting the Project.

(e) Having elected to reenter or take possession of the Project pursuant to *subsection 18.1(c)*, the Trustee acting on behalf of the Issuer may (subject, however, to any restrictions against termination of this Lease in the Trust Indenture), by notice to the Tenant given at any time thereafter while the Tenant is in Default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with *subsection 18.1(b)* and thereafter proceed to exercise any remedies lawfully available.

(f) If, in accordance with any of the foregoing provisions of this Article, the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer or the Trustee acting on behalf of the Issuer, may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either by all lawful means without being guilty of any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of contract by the Tenant.

(g) Net proceeds of any reletting or sale of the Project shall be deposited in the Debt Service Fund for application to pay the Bonds and interest thereon. "Net proceeds" shall mean the receipts obtained from reletting or sale after deducting all expenses incurred in connection with such reletting or sale, including without limitation, all repossession costs, brokerage commissions, legal fees and expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting or sale.

(h) The Issuer or the Trustee acting on behalf of the Issuer may recover from the Tenant any attorney fees or other expense incurred in exercising any of its remedies under this Lease.

Section 18.2. Survival of Obligations. The Tenant covenants and agrees with the Issuer that until all Bonds and the interest thereon and redemption premium, if any, are paid in full or

provision is made for the payment thereof in accordance with the Indenture, its obligations under this Lease shall survive the cancellation and termination of this Lease for any cause and/or sale of the Project, and that the Tenant shall be obligated to pay or cause to be paid Basic Rent and Additional Rent (reduced by any net income the Issuer or the Trustee may receive from the Project after such termination) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease. Notwithstanding any provision of this Lease or the Indenture, the Tenant's obligations under *Sections* 8.2 hereof shall survive any termination, release or assignment of this Lease, or the Indenture and payment or provision for payment of the Bonds.

Section 18.3. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

ARTICLE XIX

Section 19.1. **Performance of the Tenant's Obligations by the Issuer.** If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Issuer may (but shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant by the Issuer or the Trustee and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and the Tenant shall reimburse the Issuer for all sums so paid by the Issuer and all necessary or incidental costs and expenses incurred by the Issuer in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by the Tenant within 10 days of demand, the Issuer shall have the same rights and remedies provided for in *Article XVIII* in the case of Default by the Tenant in the payment of Basic Rent.

Section 19.2. **Performance of the Tenant's Obligations by the Subtenant.** If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Subtenant may (but shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant and Subtenant by the Issuer or the Trustee and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation on behalf of the Tenant.

ARTICLE XX

Section 20.1. **Surrender of Possession.** Upon accrual of the Issuer's right of reentry as the result of the Tenant's Default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project or transfer to title to the Project to the Owner of the Bonds), the Tenant shall peacefully surrender possession of the Project to the Trustee, as assignee of the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 30 business days after the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Tenant owns under the provisions of this Lease and are not a part of the Project. 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 Tenant. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 30 business days after such termination of this Lease shall become the separate and absolute property of the Issuer.

ARTICLE XXI

Section 21.1. **Notices.** All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by restricted mail to the Notice Address. All notices given by restricted mail as aforesaid shall be deemed duly given as of the date three days after they are so mailed. When mailed notices are given, the party giving notice will use reasonable diligence to contact the party being notified by telephone, electronic mail or facsimile on or before the date such notice is mailed.

ARTICLE XXII

Section 22.1. **Triple-Net Lease.** The parties hereto agree (a) that this Lease is intended to be a triple-net lease, (b) that the payments of Basic Rent and Additional Rent are designed to provide the Issuer and the Trustee with funds adequate in amount to pay all principal of and interest on all Bonds as the same become due and payable and to pay and discharge all of the other duties and requirements set forth herein, and (c) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide the Issuer and the Trustee with funds sufficient for the purposes aforesaid, the Tenant shall be obligated to pay or cause to be paid, and it does hereby covenant and agree to pay or cause to be paid, upon demand therefor, as Additional Rent, such further sums of money as may from time to time be required for such purposes.

Section 22.2. **Funds Held by the Trustee After Payment of Bonds.** If, after the principal of and interest on all Bonds and all costs incident to the payment of Bonds have been paid in full, the Trustee holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in this Lease and the Indenture and after payment therefrom to the Issuer of any sums of money then due and owing by the Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

ARTICLE XXIII

Section 23.1. **Rights and Remedies.** The rights and remedies reserved by the Issuer and the Tenant 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 Issuer and the Tenant 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 the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 23.2. **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 either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such Default or Defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 23.3. **The Issuer Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably or arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

ARTICLE XXIV

Section 24.1. **The Issuer May Not Sell.** The Issuer covenants that unless an Event of Default under this Lease has occurred and is continuing, and the remaining Term of this Lease has been terminated, it will not, without the Tenant's written consent, unless required by law, sell or otherwise part with or encumber its fee title interest in the Project at any time during the Term of this Lease.

Section 24.2. **Quiet Enjoyment and Possession.** The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

Section 24.3. **Issuer's Obligations Limited.** Except as otherwise expressly provided in this Lease, no recourse upon any obligation or agreement contained in this Lease or in any Bond or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise under any circumstances, under or independent of the Indenture, shall be had against the Issuer and its officers, employees and agents.

Notwithstanding anything in this Lease to the contrary, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Tenant, the Subtenant, a Owner(s) of Bonds or the Trustee as to the existence of any fact or state of affairs required to be noticed by the Issuer hereunder; (b) the Issuer shall not be under any obligation to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed or provided either by the Tenant, the Subtenant, the Trustee or the Owner(s) of Bonds; and (c) that none of the provisions of this Lease shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall have first been adequately indemnified to its satisfaction against the costs, expenses and liability which may be incurred by such action.

Notwithstanding anything in this Lease to the contrary, any obligation the Issuer may incur under this Lease or under any instrument or document executed by the Issuer in connection with this Lease that entails the expenditure of any money by the Issuer shall be only a limited obligation of the Issuer payable solely from the revenues derived by the Issuer under the Lease and shall not be, under any circumstances, a general obligation of the Issuer.

ARTICLE XXV

Section 25.1. **Investment Tax Credit; Depreciation.** The Tenant shall be entitled to claim the full benefit of (1) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (2) any deduction for depreciation with respect to the Project from federal or state income taxes. The Issuer agrees that it will upon the Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to the Tenant.

ARTICLE XXVI

Section 26.1. **Amendments.** This Lease may be amended, changed or modified in writing with the written consent of the Owner of the Bonds.

Section 26.2. **Granting of Easements.** If no Event of Default under this Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of the Issuer or the Owner(s) of Bonds, 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 Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will 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 Issuer of: (1) a copy of the instrument of grant or release or of the agreement or other arrangement, (2) a written

application signed by the Authorized Tenant Representative requesting such instrument, and (3) a certificate executed by the Tenant stating (A) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (B) that such grant or release 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 of the Owner(s) of Bonds. 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 Issuer and the Owner(s) of Bonds and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder. Any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant.

Section 26.3. Security Interests. (a) The Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security interest of the Issuer in and to the Project. The Tenant hereby authorizes the Issuer, at the direction of the Owner of the Bonds, to file or cause to be filed all such instruments required to be so filed and the Trustee to continue or cause to be continued the filings or liens of such instruments for so long as the Bonds shall be Outstanding.

(b) Under the Indenture, the Issuer will, as additional security for the Bonds assign, transfer, pledge and grant a security interest in its rights under this Lease to the Trustee. The Issuer hereby authorizes the Trustee to file financing statements or any other instruments necessary to perfect its security interest. The Trustee is hereby given the right to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Tenant, and the Tenant hereby consents to the same and agrees that the Trustee may enforce such rights as provided in the Indenture and the Tenant will make payments required hereunder directly to the Trustee.

Section 26.4. Construction and Enforcement. This Lease shall be construed and enforced in accordance with the laws of the State. The provisions of this Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. 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.

Section 26.5. Invalidity of Provisions of Lease. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 26.6. Covenants Binding on Successors and Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 26.7. Section Headings. The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease or as affecting the true meaning of the

provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

Section 26.8. **Execution of Counterparts.** This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

Section 26.9. **Electronic Transactions.** The transactions described herein may be conducted and documents may be stored by electronic means.

(REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the Issuer has caused this Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

DOUGLAS COUNTY, KANSAS

By: _____
Name: Mike Gaughan
Title: Chairman, Board of County Commissioners

[SEAL]

ATTEST:

By: _____
Jameson D. Shew, County Clerk

"ISSUER"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the ____ day of _____, 2012, by Mike Gaughan, Chairman of the Board of County Commissioenrs and Jamie Shew, County Clerk, of Douglas County, Kansas, a political subdivision of the State of Kansas.

[SEAL]

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF REQUISITION FOR PAYMENT OF PROJECT COSTS

DOUGLAS COUNTY, KANSAS
Project Fund
(Berry Plastics Project)
Payment Order No. _____

The Bank of New York Mellon Trust Company, N.A.
St. Louis, Missouri
Attn: Corporate Trust Department

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of AGNL Plastics, L.L.C. (the "Tenant") to disburse funds held by you as Trustee in the above mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedule attached hereto and incorporated herein by reference (the "Payment Schedule").

I certify that there are no outstanding debts now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Land, the Project or any part thereof.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of Issue Date of the Bonds by and between Douglas County, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

I further certify that the amounts set forth in the Payment Schedule constitute Project Costs, as said term is defined in the Lease, and that all insurance policies which are required to be in force as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of *Section 6.1* of the Lease are in full force and effect.

DATED _____, 20__.

Authorized Tenant Representative

EXHIBIT A - Payment Order No. _____

**PAYMENT SCHEDULE
FOR BUILDINGS, IMPROVEMENTS AND
MISCELLANEOUS PROJECT COSTS**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------------	---------------

Initials

APPENDIX B

GLOSSARY OF WORDS AND TERMS

"Additional Rent" means all fees, charges, costs and expenses of the Trustee or the Issuer (including reasonable attorney's fees) payable under the Indenture, all Impositions, all Default Administration Costs (as defined in the Indenture), all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorney's fees) incurred by the Issuer or the Trustee in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds and the administration or enforcement of any rights or obligations under this Lease or the Indenture except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The fees, charges, costs and expenses of the Issuer shall include, but not be limited to, any and all costs incurred by the Issuer in connection with the administration or enforcement of any rights, duties, or obligations under this Lease, the exercise or pursuit of any remedy upon an Event of Default, the amendment of this Lease, the granting of consents, easements or similar actions or any other action required of or available to the Issuer under the terms of this Lease.

"Additional Term" shall mean that term commencing on the last day of the Basic Term and terminating 5 years thereafter.

"Alterations" shall have the meaning set forth in the Sublease.

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Basic Rent" means the quarterly pro rata amount which, when added to Basic Rent Credits, will be sufficient to pay, on each Payment Date, all principal of, redemption premium, if any, and interest on all Outstanding Bonds (as defined in the Indenture) which is due and payable on such Payment Date. If for any reason on any Payment Date the Trustee does not have on deposit in the Debt Service Fund sufficient moneys to pay all principal and interest due on the Bonds on such Payment Date, then the Tenant shall pay, as Basic Rent, on such Payment Date, the amount of such deficiency.

"Basic Rent Credits" means all funds on deposit in the Debt Service Fund and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Basic Rent Payment Date.

"Basic Rent Payment Date" means each Payment Date until the principal of, redemption premium, if any, and interest on all Outstanding Bonds have been fully paid or provision made for their payment in accordance with the provisions of the Indenture.

"Basic Term" means that term commencing as of the delivery of this Lease and ending on the date 20 years thereafter, subject to prior termination as specified in this Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

"Casualty" shall have the meaning set forth in the Sublease.

"Condemnation" shall have the meaning set forth in the Sublease.

"Direct Pay Agreement" shall mean the Direct Pay Agreement dated as of the date of this Lease among the Issuer, the Trustee, the Tenant, the Subtenant, and the Lender named therein.

"Default" means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, may constitute an Event of Default.

"Environmental Assessment" means an environmental assessment with respect to the Project conducted by an independent consultant satisfactory to the Issuer and the Trustee which reflects the results of such inspections, records reviews, soil tests, groundwater tests and other tests requested, which assessment and results shall be satisfactory in scope, form and substance to the Issuer and the Trustee.

"Environmental Laws" shall have the meaning set forth in the Sublease.

"Environmental Violation" shall have the meaning set forth in the Sublease.

"Event of Bankruptcy" means an event whereby the Tenant shall: (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within 60 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

"Event of Default" means any one of the following events:

(a) Failure of the Tenant to make any payment of Basic Rent within five business days of the time and in the amounts required hereunder; or

(b) Failure of the Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other covenant, agreement, obligation or provision of this Lease on the Tenant's part to be observed or performed, and the same is not remedied within thirty (30) days after the Issuer or the Trustee has given the Tenant written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) the Tenant has commenced such correction within said 30-day period, and (ii) the Tenant diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) An Event of Default under the Sublease; or

(e) Abandonment of the Project by the Tenant and Subtenant.

"Impositions" means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant's interest therein, including any new lawful 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 water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Issuer's title to the Project.

"Improvements" shall have the meaning defined in the Indenture.

"Indenture" means the Trust Indenture delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of *Article XI* of the Indenture.

"Land" means the real property (or interests therein) described in *Schedule I*.

"Lease" means this Lease between the Issuer and the Tenant, as from time to time supplemented and amended in accordance with the provisions hereof and of the Indenture.

The term "**Notice Address**" shall mean:

(1) With respect to the Tenant:

AGNL PLASTICS, L.L.C.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 883-4157
Fax No.: (212) 883-4141
Attn: Gordon J. Whiting

With a copy to:

AGNL Manager II, Inc.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, NY 10167-0094
Phone No.: (212) 692-2296
Fax No.: (212) 867-6448
Attn: Joseph R. Wechselblatt

With a copy to:

Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
Washington, D.C. 20005-3314
Phone No.: (202) 469-4943
Fax No.: (202) 312-9411
Attn: Michele E. Williams, Esquire

(2) With respect to the Issuer:

Douglas County, Kansas
Douglas County Courthouse, 2nd Floor
1100 Massachusetts Street
Lawrence, Kansas 66044
Attn: County Clerk

(3) With respect to the Subtenant:

Packerware, LLC
c/o Berry Plastics Corporation
101 Oakley Street
Evansville, Indiana 47710
Attn: General Counsel

(3) With respect to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
911 Washington Avenue, Suite 300
St. Louis, Missouri 63101
Attn: Corporate Trust Department

"State" means the State of Kansas.

"Term" means, collectively, the Basic Term and any Additional Term of the Lease.

SCHEDULE I
DESCRIPTION OF PROPERTY

[Here reproduce *Schedule I* from the Trust Indenture]

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the "Agreement"), entered into as of August __, 2012 among Douglas County, Kansas (the "Issuer"), AGNL Plastics, L.L.C. (the "Tenant") and Packerware, LLC (the "Subtenant");

WITNESSETH THAT:

1. **Tax Exemption; Payment in Lieu of Taxes.** In consideration of the issuance by the Issuer of its Taxable Industrial Revenue Bonds, Series 2012 (Berry Plastics Project), in the principal amount of \$[21,000,000] (the "Series 2012 Bonds") to finance the acquisition of a certain manufacturing and warehouse facility, (the "Project") to be leased by the Issuer to the Tenant and subleased to the Subtenant, and in consideration of the Tenant's execution of the lease and the Subtenant's execution of the sublease of the Project, and in consideration of the laws of the State of Kansas affording exemption from *ad valorem* property taxation for the portion of the Project acquired with the proceeds of the Series 2012 Bonds for a period commencing with the year 2013, and the agreement by the Issuer to apply for such exemption if the payments provided for herein are made, the Subtenant agrees, on behalf of the Tenant, to make the payments in lieu of *ad valorem* property taxes in the amounts specified herein, in the manner provided for herein.

2. **Amount of Payments; Place of Payment.** In lieu of general *ad valorem* property taxes on the Project for calendar years 2013 through and including 2022, other than special assessments levied on account of special benefits, the Subtenant, on behalf of the Tenant, shall pay by separate check to the Treasurer of Douglas County, Kansas, or other appropriate office as directed by the Issuer, on or before December 20 in each of the years 2013 through and including 2022, with the privilege of half payment as provided by law for general *ad valorem* taxes, a payment in lieu of taxes, the total amount of which is specified below, to be distributed as and for a part of the general *ad valorem* tax collections for all taxing subdivisions in which the Project is located. The total amount of such payments shall be determined as follows:

Calendar Year	Payment in Lieu of Taxes
2013	10%
2014	10%
2015	10%
2016	10%
2017	10%
2018	10%
2019	10%
2020	10%
2021	10%
2022	10%

(expressed as a percentage of *ad valorem* tax otherwise payable in respect of the Project)

The amount of such payment in lieu of taxes will be determined each year in the same manner and according to the same statutory procedure as general *ad valorem* taxes, real and personal, as the case may be, are determined, using the valuations determined by the Douglas County Appraiser's office; i.e. the

assessed valuation of the Project as determined by the Douglas County Appraiser will be multiplied by the applicable mill levy to determine the *ad valorem* tax otherwise payable, which amount will then be multiplied by 10% to determine the amount of the payment in lieu of taxes. Such payments shall be distributed to all applicable taxing subdivisions in Douglas County as provided in K.S.A. 12-1742.

3. **Reduction of Payment for Actual Taxes Paid.** The annual amount to be paid pursuant to Paragraph 2 above shall be reduced (but not below zero) by any actual *ad valorem* tax payments paid in respect of the real property constituting a part of the Project by or on behalf of the Tenant for any given year (other than special assessments).

4. **Special Assessments.** Any special assessments levied against the real property portion of the Project, if any, shall not abate and shall continue to be the obligation of the Tenant, payable in the manner provided by law.

5. **Approval of Exemption.** This Agreement is conditioned on the issuance by the Court of Tax Appeals of the State of Kansas of an order exempting the bond-financed portion of the Project from *ad valorem* taxation in accordance with Kansas law, including particularly K.S.A. 79-201a *Second*.

6. **Failure to Make Payment in Lieu of Taxes.** Should the Subtenant, on behalf of the Tenant, fail to make the payments required above, penalties and/or interest will be assessed against the Project by the Douglas County Treasurer in accordance with applicable state laws relating to late tax payments. If the Subtenant, on behalf of the Tenant, fails to make a payment required by this Agreement and such failure shall continue for one year, this Agreement shall be deemed terminated effective as of December 20 in the year such payment was originally due, and Tenant and Subtenant agree that from and after such termination date, the Tenant shall pay or cause the Subtenant to pay in full the regular amount of *ad valorem* real estate and personal property taxes on the property constituting the Project.

7. **Counterparts.** This Agreement may be executed simultaneously and several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.

8. **Transferability.** With the prior written consent of the Issuer, the benefits of this Agreement may be transferred to any assignee of the lease or sublease of the Project made in accordance with the provisions of such documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Issuer has caused this Agreement to be signed by a duly authorized official, such signature to be attested by a duly authorized officer and its official seal to be applied, and the Tenant and Subtenant have each caused this Agreement to be signed on its behalf by a duly authorized officer, and its corporate seal (if any) to be applied, as of the day and year first above written.

DOUGLAS COUNTY, KANSAS

By: _____
Chairman of the Board of County Commissioners

[SEAL]

ATTEST:

County Clerk

AGNL PLASTICS, L.L.C.
By: AGNL Manager II, Inc., its manager

By: _____
Title: President

[SEAL]

PACKERWARE, LLC

By: _____
Title: _____

[SEAL]



August 15, 2012

The Honorable Bob Schumm
Mayor, City of Lawrence
P.O. Box 708
Lawrence, KS 66044-0708

Dear Mayor Schumm,

Thank you for the opportunity to review the language of a final draft resolution regarding the potential establishment of a Joint Economic Development Council in Lawrence and Douglas County.

Following a number of thorough and productive discussions with City and County staff, along with leadership of the Lawrence Chamber of Commerce, I wholeheartedly recommend approval of the ordinance.

We are anxious to see this matter advanced at both the City and County Commission level and know that the establishment of this important Council will pay tremendous dividends for individuals and families throughout our region.

Kindest personal regards,

A handwritten signature in black ink that reads "Greg Williams". The signature is written in a cursive style.

Greg Williams, CEcD
President & CEO

cc: Executive Committee, Lawrence Chamber of Commerce
David Corliss
Craig Weinaug

ORDINANCE NO. 8719

RESOLUTION NO. _____

A JOINT ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, AND RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, AMENDING CHAPTER I, ARTICLE 20 OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2011 EDITION, AND AMENDMENTS THERETO, PERTAINING TO THE JOINT ECONOMIC DEVELOPMENT COUNCIL FOR THE CITY OF LAWRENCE, KANSAS, AND DOUGLAS COUNTY, KANSAS, AND REPEALING THE EXISTING ARTICLE AND SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS, AND BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:

SECTION 1: Existing Chapter I, Article 20 of the Code of the City of Lawrence, Kansas, 2011 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent that Section 2 of this Ordinance supersede it.

SECTION 2: Chapter I, Article 20 of the Code of the City of Lawrence, Kansas, 2011 Edition, and amendments thereto, is hereby enacted and shall read as follows:

ARTICLE 20. JOINT ECONOMIC DEVELOPMENT COUNCIL

1-2001

JOINT ECONOMIC DEVELOPMENT COUNCIL: MEMBERSHIP; LENGTH OF TERMS.

- (A) The Joint Economic Development Council ("JEDC") shall have twelve (12) voting members, comprising the following positions: President/CEO of the Lawrence Chamber of Commerce; Chair of the Lawrence Chamber of Commerce; a Lawrence City Commissioner designated by the Lawrence City Commission; a County Commissioner designated by the Board of Commissioners of Douglas County; the University of Kansas Chancellor or designee; the Executive Chair of the Bioscience and Technology Business Center, Inc. or designee; two (2) representatives from the business community appointed by the Chamber President; two (2) community members appointed by the City Commission; two (2) community members appointed by the Board of Commissioners of Douglas County.
- (B) In addition, the JEDC shall have five (5) ex-officio members: the Vice Chair of the Economic Development Committee of the Lawrence Chamber of Commerce; the Douglas County Administrator, the Lawrence City Manager, the City Administrator of the City of Eudora or designee; and the City Administrator of the City of Baldwin City or designee.
- (C) Appointed members of the Council shall serve three (3) year terms,

except when appointed to fill out an unexpired term. Members may serve for two consecutive three-year terms. If originally appointed to an unexpired term, the member may complete that term plus two consecutive three-year terms.

1-2002 **SAME; DUTIES.**

The purpose of the JEDC is to provide general oversight and vision of the economic development efforts to attract and to retain jobs in Lawrence and Douglas County, Kansas. The duties of the JEDC shall include the approval of budget requests to the Chamber Board, the City Commission and the County Commission. The JEDC shall also recommend economic development policies and initiatives to the Chamber Board, the City Commission and the County Commission, as the JEDC determines appropriate.

1-2003 **SAME; MEETINGS.**

The meetings of the JEDC shall be governed by the Kansas Open Meetings Act. The JEDC shall meet as needed, but not less than on a quarterly basis.

1-2004 **SAME; CHAIR.**

The JEDC shall be chaired by the President/CEO of the Lawrence Chamber of Commerce. The JEDC shall provide for the preparation and approval of minutes of JEDC meetings, and shall provide copies of the same to the governing bodies of the City and the County

1-2005 **SAME; BYLAWS.**

The JEDC may adopt bylaws governing the operation of the JEDC, provided that such bylaws do not conflict with the provisions of this City ordinance or County resolution.

SECTION 3. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 4. This ordinance shall take effect and be in full force and effect immediately following its adoption and publication as provided by law.

ADOPTED by the Governing Body of the City of Lawrence, Kansas, this ____ day of August, 2012.

APPROVED:

Robert J. Schumm
Mayor

ATTEST:

Jonathan M. Douglass
City Clerk

APPROVED AS TO FORM AND LEGALITY:

Toni R. Wheeler
City Attorney

Approved by the Board of County Commissioners of Douglas County, Kansas, this ____ day of _____, 2012.

**BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS**

Mike Gaughan, Chair

Nancy Thellman, Commissioner

Jim Flory, Commissioner

ATTEST:

Jameson D. Shew, County Clerk

NOTICE TO PUBLISHER

Publish one time and return one Proof of Publication to the City Clerk, one to the City Attorney, and one to the County Clerk.



City of Lawrence

CITY MANAGER'S OFFICE

DAVID L. CORLISS
CITY MANAGER

City Offices
PO Box 708 66044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
ROBERT J. SCHUMM

COMMISSIONERS
MICHAEL DEVER
HUGH CARTER
MIKE AMYX
ARON E. CROMWELL

August 13, 2012

Board of County Commissioners
Douglas County
County Courthouse
1100 Massachusetts
Lawrence, KS 66044

RE: Redevelopment Plan for the South Project Area Redevelopment for the 9th and New Hampshire Redevelopment District

Dear County Commissioners:

Please find attached a copy of the Redevelopment Plan for the South Project Area Redevelopment for the 9th and New Hampshire Redevelopment District which has been prepared pursuant to K.S.A. 12-1770 et. seq. The City Commission will be preparing to consider adoption of a Resolution establishing October 2, 2012 as the public hearing date on the proposed redevelopment plan. You will be receiving notice of this public hearing under separate cover. Please let me know if you have any questions.

Sincerely,

Diane Stoddard
Assistant City Manager

c: G. Craig Weinaug, County Administrator





**NINTH & NEW HAMPSHIRE REDEVELOPMENT
DISTRICT
SOUTH PROJECT AREA REDEVELOPMENT
PROJECT PLAN
AUGUST 13, 2012**

Summary of Exhibits

- Exhibit A: Resolutions No. 6967 and 6968 (Public Notice of Hearing and Recognition that Project is located in Enterprise Zone)
- Exhibit B: Illustration of TIF District Area
- Exhibit C: Ordinance No. 8728 (Removal of South Project Area from Existing TIF District)
- Exhibit D: Ordinance No. 8768 (Approval of Formation of New Ninth & New Hampshire TIF District)
- Exhibit E: Illustration and Description of TIF Project Buildings and Structures
- Exhibit F: Map and Legal Description of South Project Area
- Exhibit G: Pre-Design Public and Private Infrastructure Construction Cost Estimates
- Exhibit H: Feasibility Study

South Project Area Redevelopment Project Plan

This Redevelopment Project Plan (the “**Plan**”) is the “redevelopment project plan” required by K.S.A. 12-1772(a) for the Ninth & New Hampshire Redevelopment District (the “TIF District”). The District contains two separate project areas, the South Project Area (the “**South Project Area**”) and the North Project Area. This Plan pertains to the South Project Area. The redevelopment project for the South Project Area (the “**South Project**”) consists of an eighty-one unit hotel and eight apartments, meeting space and commercial uses and underground parking located at the southeast corner of Ninth & New Hampshire in downtown Lawrence, Kansas. As previously disclosed, the hotel may be redesigned to increase the number of hotel units to 90 to 92 units and remove the apartments. There will not be any exterior change to the building made as part of this redesign other than possibly the number of exterior windows. This change, if made, should not cause a material difference in either the feasibility or other projections related to the South Project. The South Project also includes certain improvements that may be paid for by the City of Lawrence for an extension of the Art Center to include an Arts Commons space.

This Plan describes how the South Project will utilize tax increment financing (“**TIF**”) to finance or reimburse “redevelopment project costs” incurred during the redevelopment of the South Project, as such costs are defined in K.S.A. 12-1770 et seq. (the “**TIF Act**”). This Plan is intended to be the basis for a redevelopment agreement (the “**Redevelopment Agreement**”) between the 900 New Hampshire, LLC, the Developer of the Project (the “**Developer**”) and the City of Lawrence, Kansas (the “**City**”) for the South Project.

I. PROCEDURAL HISTORY AND GENERAL INFORMATION

On March 13, 2012, the City and the Developer executed a Funding Agreement between Developer and the City of Lawrence to finance the costs of a feasibility study and the City’s attorney’s fees.

On June 19, 2012, the City Commission approved Resolution 6967 (the “**Resolution**”), which scheduled a public hearing on July 24, 2012 to consider the formation of a TIF district for the Project Area, defined below. At this same meeting, the City Commission also approved Resolution 6968 making a finding that the proposed redevelopment district lies within an Enterprise Zone. A copy of both Resolutions are attached to and incorporated in this plan as **Exhibit A**. The Resolutions were published as required by the TIF Act.

The TIF district is an area generally bounded on the south by 10th Street, on the west by New Hampshire Street, on the east by the alleyway the runs in between the block between New Hampshire Street and Rhode Island Street, and on the north by the boundary between the City owned parking lot located mid-block between New Hampshire Street and Rhode Island Street. There is a small portion of the new TIF District located to the east of the alleyway that runs north and south, and a small portion of the TIF District that runs north of the City owned parking lot

that is an area owned by the City but which water line improvements may be required to be made. A map of the proposed TIF district is attached as **Exhibit B**.

As noted above, the TIF District is further divided into the “South Project Area” and the “North Project Area.” The two project areas are generally divided north and south by Ninth Street. The South Project and North Project Areas are shown on the attached map (Exhibit B).

The South Project Area was previously located in an existing TIF district formed as part of the Downtown 2000 TIF District. The Downtown 2000 TIF District was established by Ordinance No. 7127 and adopted on August 3, 1999. In accordance with Kansas statutes K.S.A. 12-1770 et. seq. (the “Act”), the City is authorized to establish redevelopment districts within a defined area of the City. In accordance with this same Act, the City is authorized to remove an area from an existing district. On June 26, 2012, the City approved on first reading an ordinance, Number 8728, to remove the South Project Area from the existing TIF district. A copy of the ordinance approving the removal of the South Project Area from the existing TIF district is attached as **Exhibit C**.

On July 24, 2012, the City Commission held and closed a public hearing to consider the formation of the TIF District. The Ordinance was passed on second reading on August 7, 2012. The term “**TIF District**” refers to the real property generally shown on **Exhibit B**, and as legally described in the Ordinance. The Ordinance is attached to and incorporated in this Plan as **Exhibit D**. The Ordinance included a description of the district plan and found that the TIF District was an eligible area, all in accordance with the TIF Act.

II. PROJECT BUILDINGS, FACILITIES, AND IMPROVEMENTS

The “South Project Area” consists of all improvements generally described below and illustrated in **Exhibit E**, attached to and, by reference, incorporated in this Plan. The South Project area consists of the future site of hotel and related mixed-use structure, the public right-of-ways along portions of New Hampshire Street and an alley between New Hampshire Street and Rhode Island Street and the Art Commons space. Each of the above-referenced properties and right-of-ways will be improved in some manner in connection with the Project. A map and legal description of the South Project Area is attached hereto as **Exhibit F**.

A. Buildings and Structures.

The new hotel will be a multi-use structure consisting of approximately eighty-one rooms, eight apartments, and associated mixed use commercial spaces. As noted above, the Developer may opt to change the apartments into hotel rooms, in which case there would be approximately 90 to 92 hotel rooms (and no apartments). The structure will include ancillary uses such as a conference room, hotel lobby and hotel café space (area where complimentary breakfast may be served), restaurant space, and bar space. Additional commercial uses may consist of a retail space located on the ground floor (approximately 7,000 square feet that the Developer would like to lease for use as a small community market), restaurant space located on

the top floor, and an outdoor pool located on the top floor. The structure will consist of approximately 121,908 square feet, including the underground parking garage space.

In addition to the Project also includes an underground parking structure facility consisting of approximately 114 parking spaces. The underground parking structure and related site improvements will cost approximately \$3.35 million.

The Arts Commons is intended to serve as a public arts space, managed and curated by the Arts Center, featuring a park-like setting and perhaps a built structure. This space would be located on the Salvation Army tract located directly south of the Arts Center. The space could be a venue for public art exhibitions, theatrical productions, music, film and art-making activities. The green space would also provide space for children attending the arts-based preschool and other educational programs the opportunity to work and play outside. The building, paid for and constructed by the Arts Center through a future capital campaign could help define the public green space and add classroom, preschool, studio and exhibition space. The Plan includes funding for site acquisition and preparation, in the amount of approximately \$900,000. The Arts Commons project is subject to the City's acquisition of the Salvation Army property.

B. Infrastructure Improvements.

The Project will also include various public infrastructure improvements. The vast majority of these infrastructure improvements are not necessitated by the Project. For example, while certain existing utilities require updating to service the South Project, all of the improvements are intended to enhance both the Project and the adjacent neighborhood, and to minimize harm to nearby historic properties. The following are the planned public infrastructure improvements to be constructed in connection with the Project, as described on the preliminary cost estimates attached to and, by reference, incorporated in this Plan as **Exhibit G**:

- Alleyway improvements in the alley located between New Hampshire Street and Rhode Island Street ;
- Reconfiguration of the parking spaces located along New Hampshire Street to create a drop off lane for the hotel;
- Sidewalk and pedestrian crossing improvements along Ninth Street;
- Grading and site preparation within the public right of way
- Landscaping and plantings, benches, lighting, decorations, and similar amenities; and
- Public water and sanitary and storm improvements

C. Construction of Project Improvements.

The construction of the public and private infrastructure improvements described above will occur simultaneously with the construction of the hotel and mixed-use building. Consequently, there must be close cooperation and coordination between the construction of

those improvements, especially with respect to timing and the efficient use of machinery on-site. The Developer will finance and construct the public and private improvements, subject to normal city approval and specifications as part of the construction. Occupancy of the hotel and mixed-use project shall not occur until substantial completion of the public improvements. It is anticipated that any future construction and resulting improvements made on the Art Commons space may be delayed until after a fundraising campaign is conducted and therefore will occur after the date of the hotel/mixed-use project improvements.

III. SUMMARY OF SOUTH NINTH STREET FEASIBILITY STUDY

Pursuant to the Funding Agreement approved by the City Commission and dated March 13, 2012, the City retained Springsted Incorporated to perform the feasibility study required by the TIF Act. A copy of the South Redevelopment Project Financial Feasibility Study (the “**Feasibility Study**”) is attached to and, by reference, incorporated in this Plan as **Exhibit H**. The Feasibility Study concludes that the Project is feasible. As described more specifically in **Exhibit H**, the Feasibility Study estimates that total TIF revenues for the South Project over the term of the Project will be \$6,210,276. Total TIF expenses are estimated to be \$7,161,288 (which includes anticipated interest costs calculated using a 5.5% interest rate). In combination with the Developer’s own contributions of equity and private indebtedness, there are sufficient funds to permit the use of tax increment financing. This TIF District is anticipated to be a “pay as you go” TIF District with the Developer paying upfront all infrastructure costs related to the hotel, the City paying all costs associated with Art Commons area, and both taking the risk that sufficient revenues are generated by the TIF District and TDD to repay these amounts advanced.

It should be noted that the study assumed that Transportation Development District (“**TDD**”) would also be formed and that revenues generated by the TDD would be used to help pay the eligible costs. As discussed in more detail below, a TDD will be formed, but the City and the Developer have agreed to use TDD revenues to first help repay the City for costs incurred by the City in the construction of the City-owned parking facility located across the street to the west from the South Project Area.

IV. DESCRIPTION OF SHARING AGREEMENT

In connection with the agreement by the City to remove the South Project from the existing TIF district, the City requested, and the Developer agreed to share certain revenues that are anticipated to be generated from the TIF District and the TDD with the City to assist the City in recovering the costs of the original parking structure built by the City in connection with the creation of the Downtown 2000 TIF District. The basic structure of the proposed sharing agreement can be summarized as follows:

- Developer advances and pays for all eligible costs associated with the public infrastructure costs necessary for the hotel/mixed-use project;
- City advances and pays for all eligible costs associated with the Art Commons project;
- Transportation Development District revenues up to \$850,000 (with no interest factor) are first used to repay the City for costs associated with the construction of the City owned parking garage already located on the west side of New Hampshire;

- A specified percentage, five percent (5%), of the annual revenues generated by the TIF District is to be paid to the City to repay the City for eligible costs advanced towards the purchase of the Art Commons site and related infrastructure, including possible building costs assuming these building costs are eligible costs. To the extent that revenues are available and not otherwise dedicated, the City would be reimbursed at the end of the project funds up to the \$900,000 total for the Arts Commons project.
- The parties do not anticipate that any of the Art Commons project improvements will be taxable or will contribute to the payment of the eligible costs.

V. PROPOSED FINANCING METHODS

Tax increment financing will be used to finance or reimburse redevelopment project costs as follows:

1. Subject to the TIF Cap described in paragraph 5 below, all redevelopment project costs, including interest thereon at the greater of 5.5% of the Prime Rate plus 1% as published in the Wall Street Journal, will be eligible for reimbursement to the fullest extent permitted by Kansas law.
2. The following funds will be collected for a period of twenty (20) years from the date the ordinance approving the Plan is published in the official City newspaper and held in accordance with the TIF Act:
 - a. All incremental real property taxes assessed in the South Project Area during the term of the South Project;
 - b. All incremental real property taxes assessed on the remaining portions of the TIF District, to the extent the increases in real property taxes are caused by the improvements described in this Plan or other activities that do not constitute a new project;
 - i. Any increases in real property taxes caused by a new project will not be included in the TIF fund without the City's approval; and
 - c. All City and County sales taxes paid in the TIF District during the term of the South Project.
3. The Developer has elected to utilize the direct reimbursement method, and will privately finance all public and private improvements described in this Plan.
4. The City shall have the right to inspect such public improvements for compliance with the City Code, etc.
5. To the extent that the TIF Fund has available tax increment, the City shall reimburse all of the Developer's eligible expenses until all such expenses have

been reimbursed, or twenty (20) years, whichever first occurs. Notwithstanding the previous sentence, there shall be a limitation on the reimbursement of the Developer's eligible expenditures (the "TIF Cap"), as follows;

- a. Except to reimburse the City's expenses as described in paragraph 7., below, all tax increment shall be available to reimburse up to \$3,500,000 of the Developer's redevelopment project costs (the "Cap Amount"). The Cap Amount shall not include interest costs that the Developer is also entitled to recover that shall be at the Developer's actual borrowing rate (but not to exceed the WSJ Prime Rate plus 1%) calculated from the date such eligible costs are advanced by the Developer.
 - b. After the reimbursement of the Cap Amount, any additional TIF revenue shall be allocated to the Developer to repay the Developer for eligible costs associated with the North Project, but in no event shall the cumulative amount of reimbursements paid to the Developer relating directly to the North Project and these additional payments generated by the South Project exceed the lesser Developer's actual redevelopment project costs plus interest thereon associated with the North Project, or the Cap Amount specified in the North Project Redevelopment Plan Agreement.
6. Eligible expenses incurred by the Developer prior to the formation of the District shall be eligible for reimbursement.
 7. The City will be entitled to reimbursement for all of the City's actual and adequately documented expenses, including the City's reasonable attorneys' fees.
 8. The Developer will be entitled to reimbursement for all of the Developer's actual and adequately documented expenses, including the Developer's reasonable attorneys' fees, to the fullest extent permitted by the Act.
 9. All revenues from an additional one percent (1%) sales tax charged by the Project pursuant to a Transportation Development District (the "TDD") affecting a portion of the Project Area will be held in the appropriate account in accordance with K.S.A. 12-17,140 et seq.

This Plan does not contain a relocation assistance plan described in K.S.A. 12-1772(a)(4), because the City will not acquire any real property in the District while carrying out the provisions of the TIF Act. Furthermore, no residential tenants presently occupy any portion of the structures that will be demolished in connection with Project.

V. CONCLUSION

The Project will create approximately 121,908 square feet of new development in Lawrence, which will generate approximately \$6,210,276 in increased real estate and local sales taxes during the twenty (20) year lifespan of the Project. The TDD sales tax will generate an estimated \$1.18 million in additional revenue, of which \$850,000 will first be used to repay the City for its investment in the existing parking structure, and the remaining portion will be used to pay for eligible TDD expenses. There will be approximately \$7.1 million in redevelopment project costs (TIF and TDD), including interest, required to construct the Project. Direct reimbursement from the TIF fund will reimburse redevelopment project costs to the extent tax increment is available, subject to the TIF Cap. The balance of any unpaid redevelopment project costs associated with the South Project will be paid for by Developer, and the balance of any unpaid redevelopment costs associated with the Art Commons project will be paid for by the City.

RESOLUTION NO. 6967

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING REGARDING THE ESTABLISHMENT OF A REDEVELOPMENT DISTRICT PURSUANT TO K.S.A. 12-1770 ET SEQ.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

Section 1. The City of Lawrence, Kansas (the "City") is considering the establishment of a redevelopment district pursuant to K.S.A. 12-1770 et seq., as amended (the "Act").

Section 2. Notice is hereby given that a public hearing will be held by the City to consider establishment of a redevelopment district on July 24, 2012 in the Commission Meeting Room located in City Hall, 6 East 6th Street, commencing at 6:35 p.m. or as soon thereafter as the public hearing may be held.

Section 3. The proposed redevelopment district is bounded on the north by 8th Street, on the east generally by the alley between New Hampshire and Rhode Island, on the south by 10th Street, and on the west generally by New Hampshire. A map of the redevelopment district is attached hereto as **Exhibit A**. The boundaries of the redevelopment district are legally described as shown on **Exhibit B** hereto.

Section 4. The district plan for the proposed redevelopment district provides for the redevelopment district to include two project areas, which are depicted on the map attached hereto as **Exhibit A**. The buildings and facilities to be constructed within each project area within the redevelopment district are generally described as follows:

North Project Area

Planned mixed-use apartment and banking center with between 90 to 120 apartment units and bank and apartment amenity space located on the first floor with an underground parking facility, and related public and private infrastructure.

South Project Area

Planned mixed-use 81 unit hotel with retail space and hotel lobby on the first floor, underground parking and related public and private infrastructure.

This area will also include a proposed project related to the Lawrence Arts Center, an Arts Commons space. This Arts Commons is intended to serve as a public arts space, managed and curated by the Arts Center, featuring a park-like setting and perhaps a built structure. This space would be located on the Salvation Army tract located directly south of the Arts Center. The space could be a venue for public art exhibitions, theatrical productions, music, film and art-making activities. The green space would also provide space for children attending the arts-based preschool and other educational programs the opportunity to work and play outside. The building, paid for and constructed by the Arts Center through a future capital campaign could help define the public green space and add classroom, preschool, studio and exhibition space. The project includes funding for site acquisition and preparation.

Section 5. A description and map of the proposed redevelopment district are available for inspection and copying in the offices of the City Clerk, City Hall, 6 East 6th Street, Lawrence, Kansas, Monday through Friday (other than holidays) between 8:00 a.m. and 5:00 p.m.

Section 6. The Governing Body will consider the findings necessary for the establishment of a redevelopment district after conclusion of the public hearing.

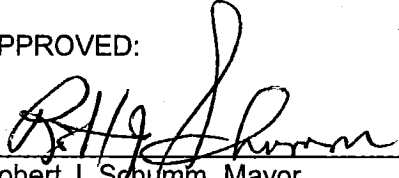
Section 7. The City Clerk is hereby authorized and directed to publish this resolution once in the official city newspaper not less than one week or more than two weeks preceding July 24, 2012, the date set for the public hearing. The City Clerk is also authorized and directed to mail a copy of this resolution via certified mail, return receipt requested to the board of county commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment district, and to each owner and occupant of land within the proposed redevelopment district, not more than 10 days following the date of the adoption of this Resolution.

Section 8. This Resolution shall become effective upon its adoption by the Governing Body.

ADOPTED by the Governing Body on June 19th, 2012.

SIGNED by the Mayor on June 19th, 2012.

APPROVED:


Robert J. Schumm, Mayor

ATTEST:

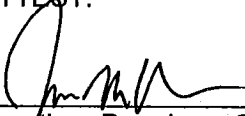

Jonathan Douglass, City Clerk

EXHIBIT A

MAP OF PROPOSED REDEVELOPMENT DISTRICT

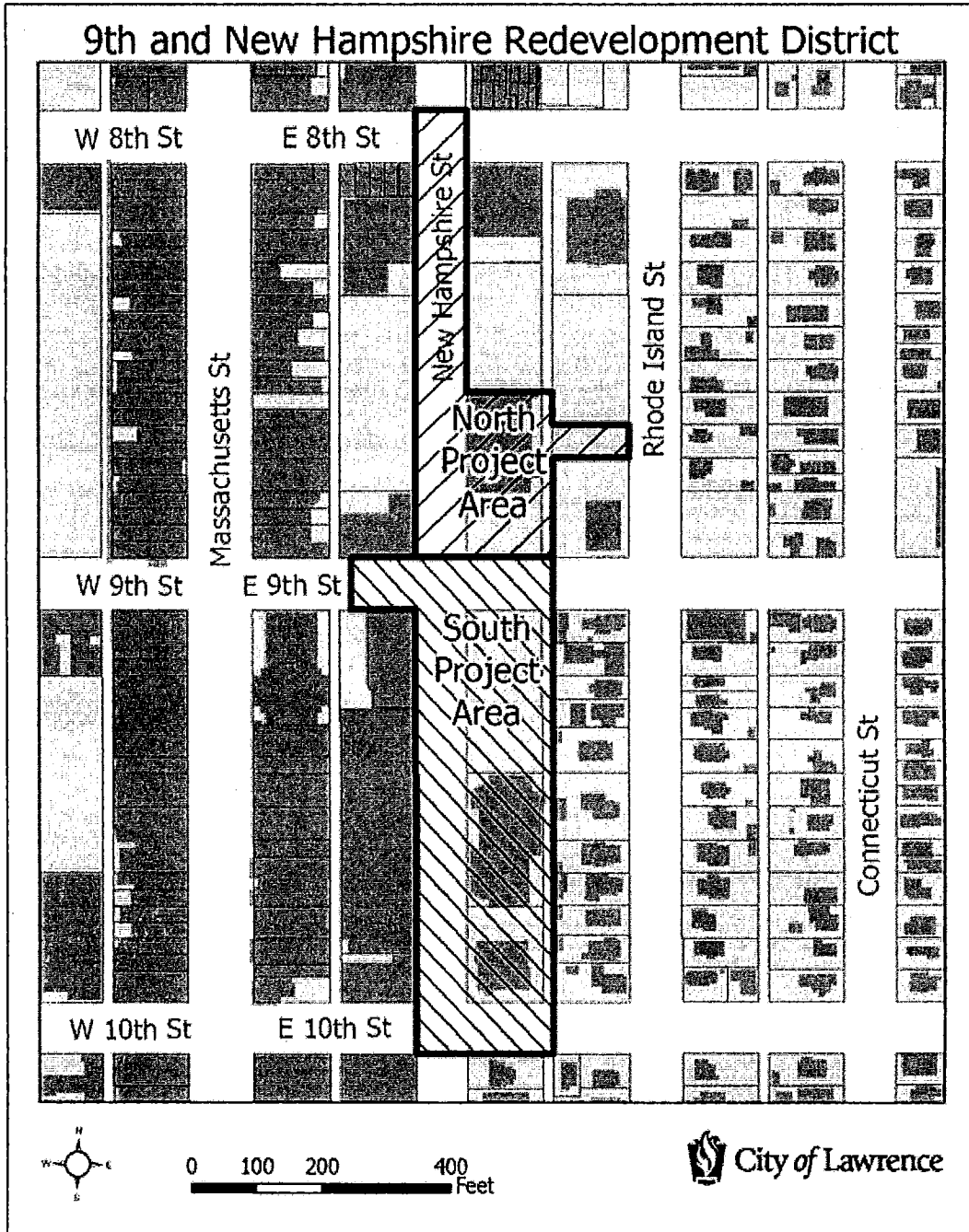


EXHIBIT B

LEGAL DESCRIPTION OF PROPOSED REDEVELOPMENT DISTRICT

North Project Area

Lots 60, 62, 64, 66, and 68 New Hampshire Street, and Lot 61 Rhode Island Street, City of Lawrence, Douglas County, Kansas and adjacent right-of-way of alley to the east, and adjacent right-of-way of New Hampshire Street to the west and extending north from northern boundary of the project area through the 8th Street intersection.

South Project Area

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

RESOLUTION NO. 6968

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS MAKING CERTAIN FINDINGS AND DECLARATIONS REGARDING CERTAIN PROPERTY WITHIN THE CITY LIMITS.

WHEREAS, it is desirable and in the public interest that the City make surveys and prepare plans in order to undertake and carry out redevelopment in that area proposed as a redevelopment district situated in the City which is delineated on the map attached hereto as **Exhibit A**, which is attached to and made a part of this Resolution, and legally described in **Exhibit B**, which is attached to and made a part of this Resolution; and

WHEREAS, the area as depicted in **Exhibit A** and **Exhibit B** is part of an enterprise zone since such area was part of the area of the City designated as an enterprise zone prior to July 1, 1992 by resolution of the City pursuant to K.S.A. 12-17,107 through 12-17,113 prior to its repeal and the conservation, development or redevelopment of such area is necessary to promote the general and economic welfare of the City.

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

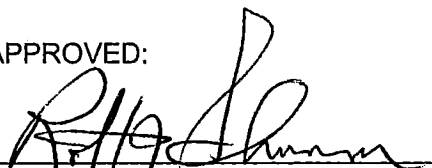
Section 1. The Governing Body finds that the area described in **Exhibits A and B** attached hereto was part of the area of the City designated as an enterprise zone prior to July 1, 1992 by resolution of the City pursuant to K.S.A. 12-17,107 through 12-17,113 prior to its repeal.

Section 2. The redevelopment of the area described in **Exhibits A and B** attached hereto is necessary for the general and economic welfare of the City, and that the undertaking by the City of surveys and plans for a redevelopment district in the proposed area is hereby approved.

ADOPTED by the Governing Body on June 19th, 2012.

SIGNED by the Mayor on June 19th, 2012.

APPROVED:


Robert J. Schumm, Mayor

ATTEST:

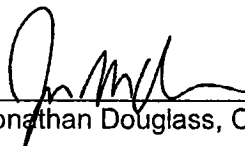

Jonathan Douglass, City Clerk

EXHIBIT A

MAP OF PROPOSED REDEVELOPMENT DISTRICT

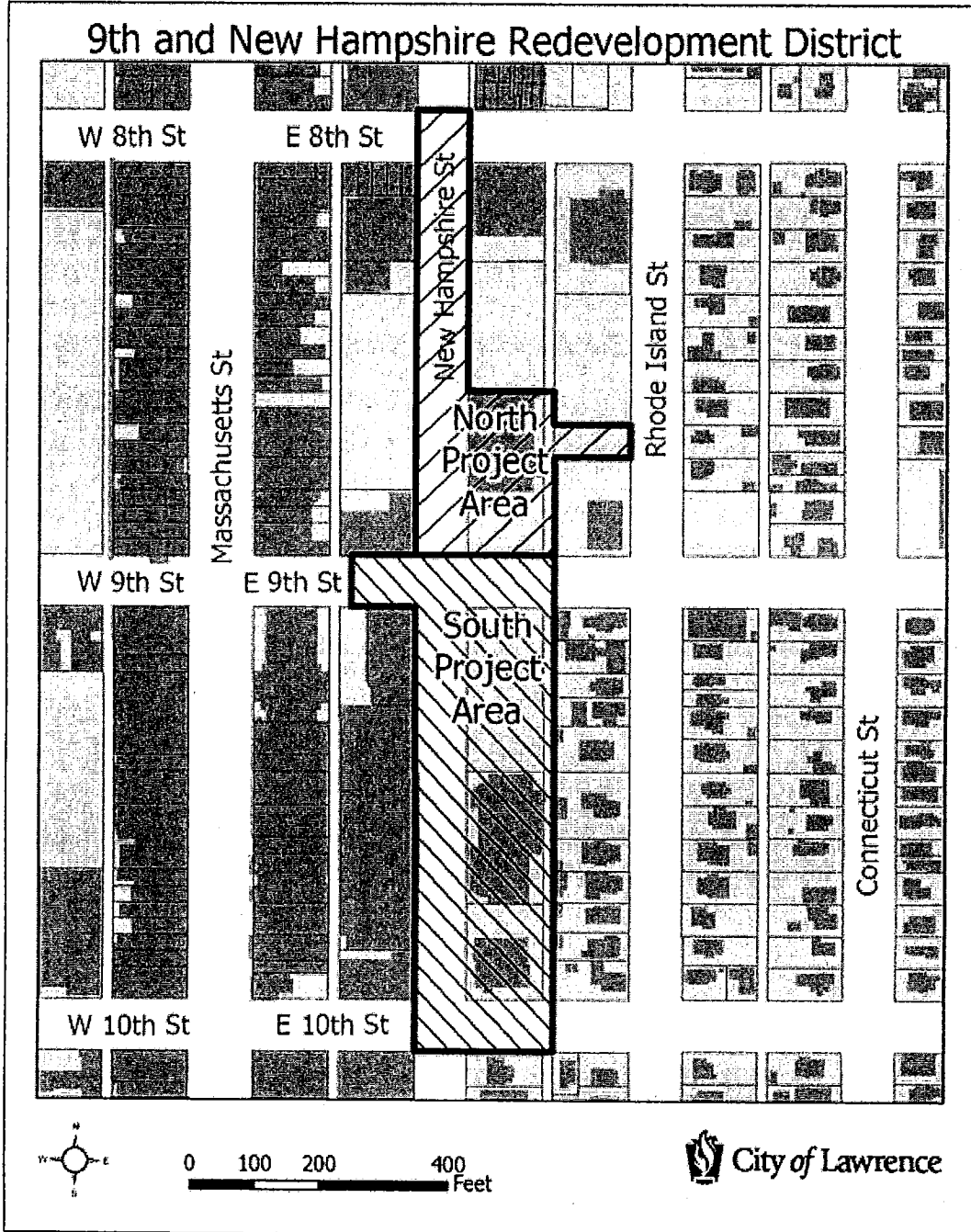


EXHIBIT B

LEGAL DESCRIPTION OF PROPOSED REDEVELOPMENT DISTRICT

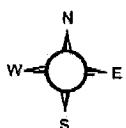
North Project Area

Lots 60, 62, 64, 66, and 68 New Hampshire Street, and Lot 61 Rhode Island Street, City of Lawrence, Douglas County, Kansas and adjacent right-of-way of alley to the east, and adjacent right-of-way of New Hampshire Street to the west and extending north from northern boundary of the project area through the 8th Street intersection.

South Project Area

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

9th and New Hampshire Redevelopment District



ORDINANCE NO. 8728

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS MAKING FINDINGS AND REMOVING CERTAIN PROPERTY FROM THE REDEVELOPMENT DISTRICT PURSUANT TO K.S.A. 12-1770 ET SEQ., AND AMENDMENTS THERETO (900 NEW HAMPSHIRE).

WHEREAS, pursuant to the provisions of K.S.A. 12-1770 et seq., as amended (the "Act"), the City of Lawrence, Kansas (the "City") is authorized to establish redevelopment districts within a defined area of the City which is an "eligible area" as said term is defined in the Act; and

WHEREAS, pursuant to the Act and Ordinance No. 7127 adopted on August 3, 1999, the governing body established a redevelopment district in City (the "Redevelopment District") consisting of both the East and West Side of New Hampshire Street from 9th Street to 10th; and

WHEREAS, pursuant to the Act and Ordinance No. 7207 adopted on April 11, 2000, the governing body approved a redevelopment plan (the "Redevelopment Plan") for the Redevelopment District; and

WHEREAS, pursuant to the Act the City desires to remove certain property from the Redevelopment District and has prepared a feasibility study (the "Feasibility Study") that shows that the tax increment revenue from the resulting Redevelopment District is expected to be sufficient to pay the redevelopment project costs under the Redevelopment Plan; and

WHEREAS, the City desires to remove the property shown on **Exhibit A** and legally described on **Exhibit B** from the Redevelopment District;

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

Section 1. The Governing Body hereby finds that the Feasibility Study presented to the Governing Body satisfies the provisions of K.S.A. 2010 Supp. 12-1771(i)."of the Act.


Section 2. The Governing Body hereby removes the property legally described on **Exhibit B** from the Redevelopment District.

Section 3. The City Clerk is directed to give notice to the Douglas County Clerk and Appraiser to revise the base year assessed valuation of the Redevelopment District in accordance with the Act.

Section 4. This Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its publication once in the official City newspaper.

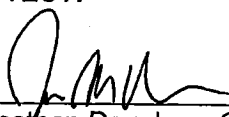
PASSED by the governing body of the City on July 24th, 2012 and **APPROVED AND SIGNED** by the Mayor.

APPROVED:



Robert J. Schumm, Mayor

ATTEST:



Jonanhan Douglass, City Clerk

EXHIBIT A

MAP OF REMOVED PROPERTY FROM REDEVELOPMENT DISTRICT

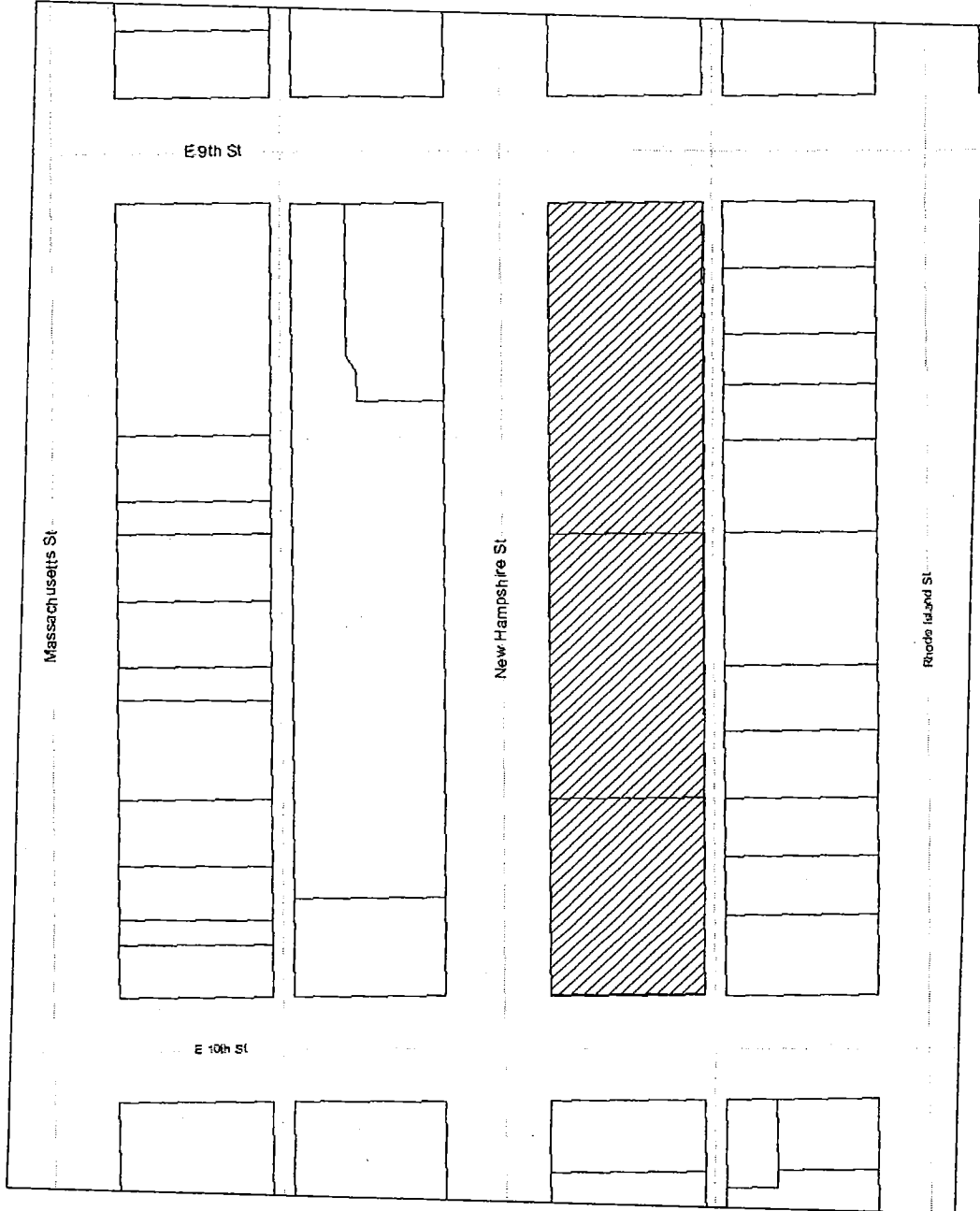


EXHIBIT B

LEGAL DESCRIPTION OF REMOVED PROPERTY FROM REDEVELOPMENT

DISTRICT

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, and adjacent right-of-way of 9th Street to the north and adjacent right-of-way of New Hampshire Street to the west

EXHIBIT D

ORDINANCE NO. 8768

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS MAKING FINDINGS AND ESTABLISHING A REDEVELOPMENT DISTRICT PURSUANT TO K.S.A. 12-1770 ET SEQ., AND AMENDMENTS THERETO.

WHEREAS, pursuant to the provisions of K.S.A. 12-1770 et seq., as amended (the "Act"), the City of Lawrence, Kansas (the "City") is authorized to establish redevelopment districts within a defined area of the City which is found by the City to be an "enterprise zone" as defined in the Act, and is therefore an "eligible area" as said term is defined in the Act; and

WHEREAS, the Governing Body adopted Resolution No. 6967 on June 19, 2012 calling for a public hearing considering the establishment of a redevelopment district to be held by the Governing Body on July 24, 2012; and

WHEREAS, the Governing Body adopted Resolution No. 6968 making a finding that the area of the proposed Redevelopment District as hereinafter described was properly designated as an enterprise zone prior to July 1, 1992 by resolution of the City pursuant to K.S.A. 12-17,107 through 12-17,113 prior to its repeal; and

WHEREAS, notice of the public hearing was given as required by the Act, except that the Douglas County Commission and the Board of Education of USD #497 have each waived the required notice to them under the Act; and

WHEREAS, the public hearing was held on July 24, 2012 and closed on the same day; and

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

SECTION 1. The Governing Body hereby finds that the real property described in **Exhibits A and B** (the "Redevelopment District") attached hereto is an eligible area for being designated as a redevelopment district pursuant to the Act because the real property was found by the governing body to have been designated as an enterprise zone prior to July 1, 1992 by resolution of the City pursuant to K.S.A. 12-17,107 through 12-17,113 prior to its repeal.

SECTION 2. The Governing Body hereby finds that the conservation, development or redevelopment of the Redevelopment District is necessary to promote the general and economic welfare of the City.

SECTION 3. The Governing Body hereby establishes the Redevelopment District, which shall include two project areas as depicted on the map attached hereto as **Exhibit A**. The district plan is hereby approved, and consists of buildings and facilities to be constructed within each project area, generally described as follows:

North Project Area

Planned mixed-use apartment and banking center with between 90 to 120 apartment units and bank and apartment amenity space located on the first floor with an underground parking facility, and related public and private infrastructure.

South Project Area

Planned mixed-use 81 unit hotel with retail space and hotel lobby on the first floor, underground parking and related public and private infrastructure.

This area will also include a proposed project related to the Lawrence Arts Center, an Arts Commons space. This Arts Commons is intended to serve as a public arts space, managed and curated by the Arts Center, featuring a park-like setting and perhaps a built structure. This space would be located on the Salvation Army tract located directly south of the Arts Center. The space could be a venue for public art exhibitions, theatrical productions, music, film and art-making activities. The green space would also provide space for children attending the arts-based preschool and other educational programs the opportunity to work and play outside. The building, paid for and constructed by the Arts Center through a future capital campaign could help define the public green space and add classroom, preschool, studio and exhibition space. The project includes funding for site acquisition and preparation.

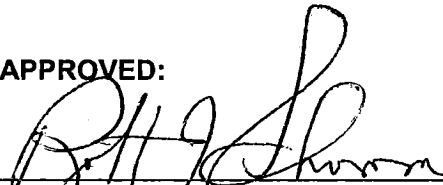
SECTION 4. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 5. This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this 7th day of August, 2012.

SIGNED by the Mayor this 7th day of August, 2012.

APPROVED:


Robert J. Schumm, Mayor

ATTEST:

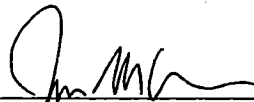

Jonathan M. Douglass, City Clerk

EXHIBIT A

**MAP OF REDEVELOPMENT DISTRICT
AND PROJECT AREA**

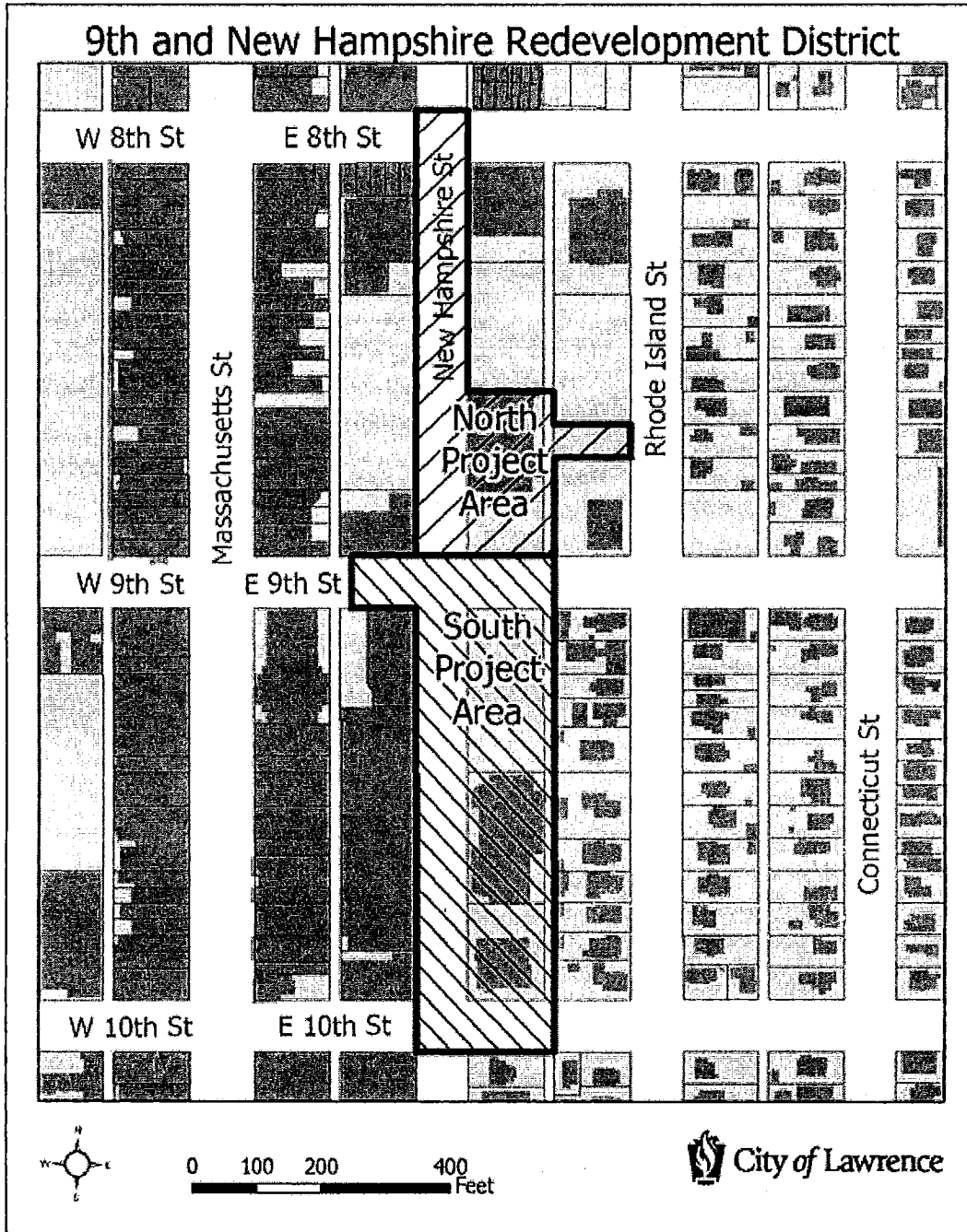


EXHIBIT B

LEGAL DESCRIPTION OF REDEVELOPMENT DISTRICT

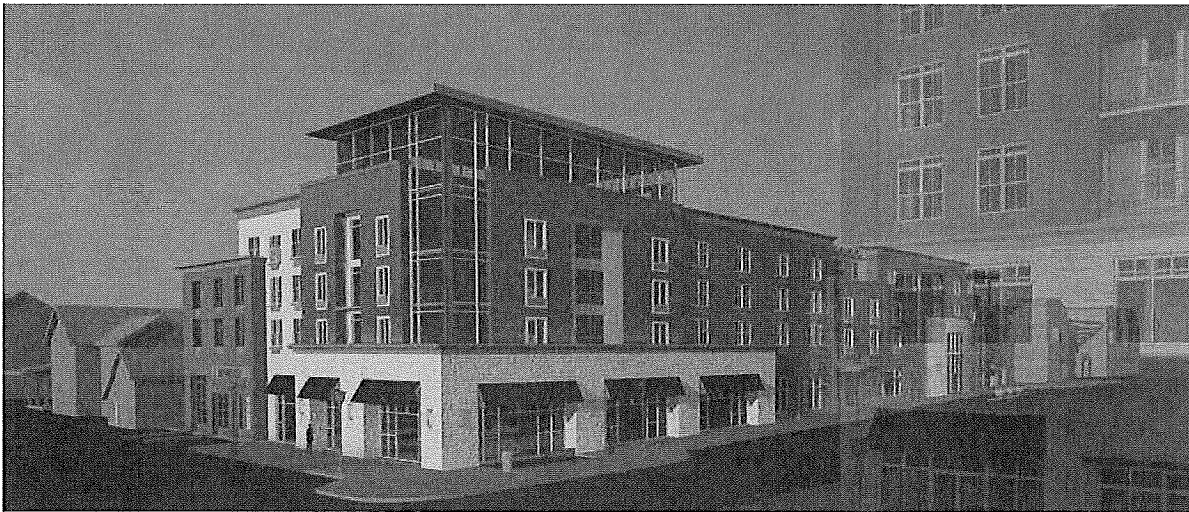
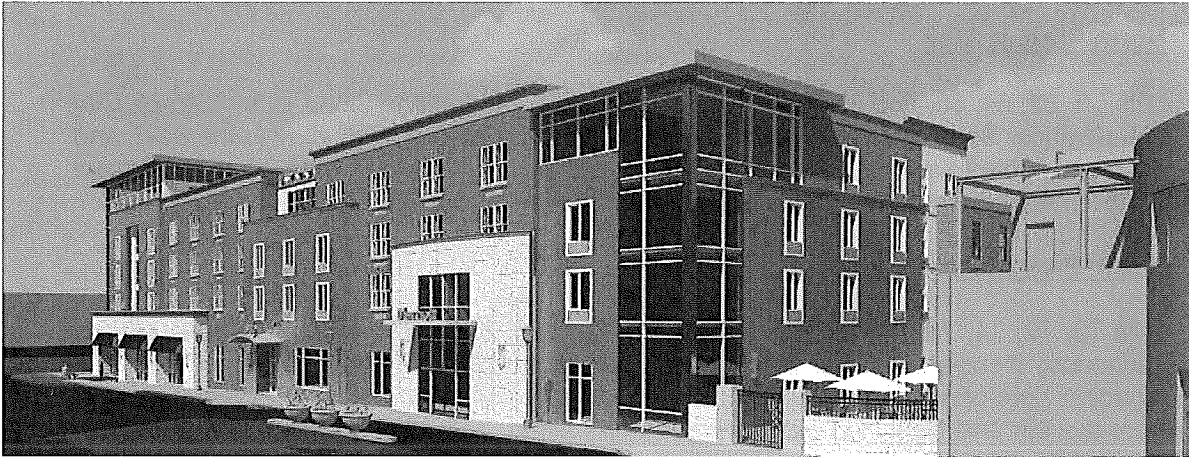
North Project Area

Lots 60, 62, 64, 66, and 68 New Hampshire Street, and Lot 61 Rhode Island Street, City of Lawrence, Douglas County, Kansas and adjacent right-of-way of alley to the east, and adjacent right-of-way of New Hampshire Street to the west and extending north from northern boundary of the project area through the 8th Street intersection.

South Project Area

Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

EXHIBIT E: ILLUSTRATION AND DESCRIPTION OF TIF PROJECT BUILDINGS AND STRUCTURES



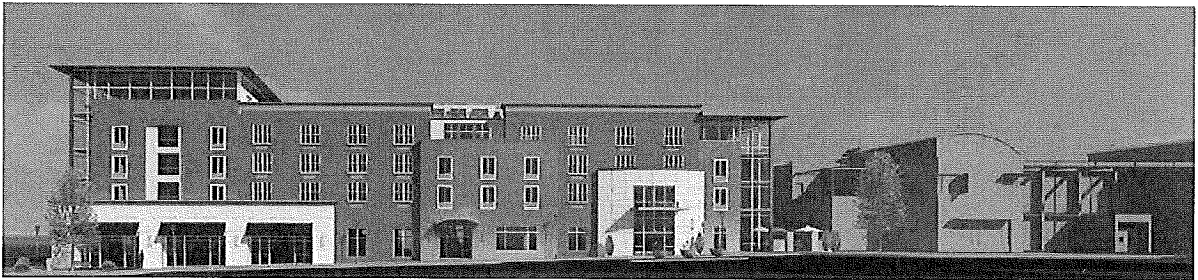
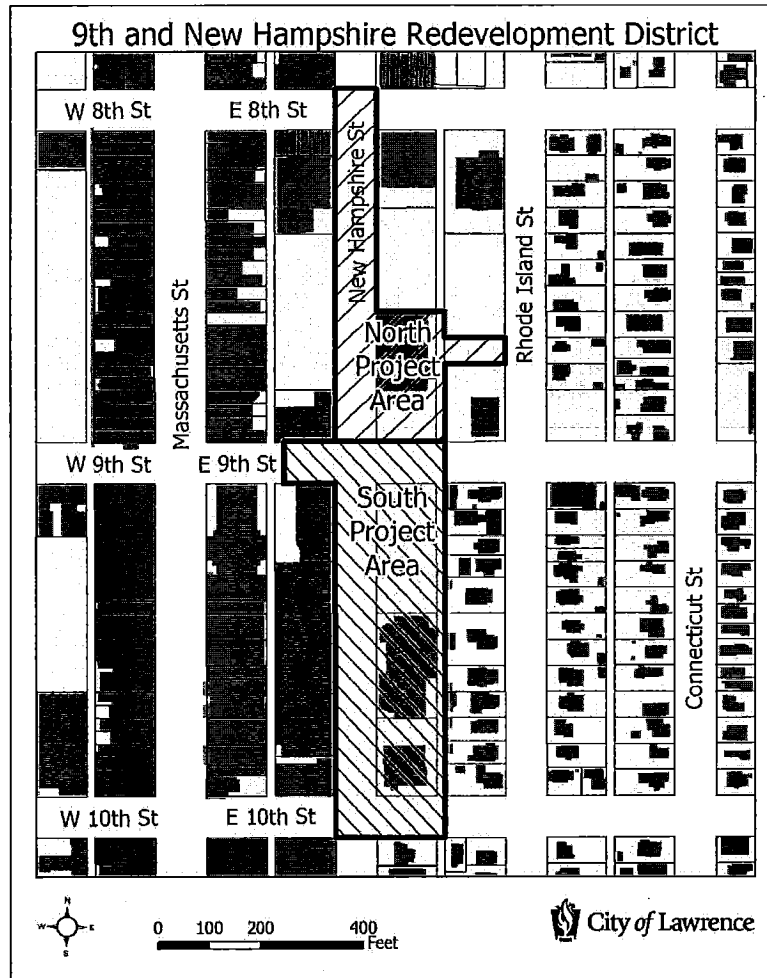


EXHIBIT F: MAP AND LEGAL DESCRIPTION OF SOUTH PROJECT AREA



South project area legal description:

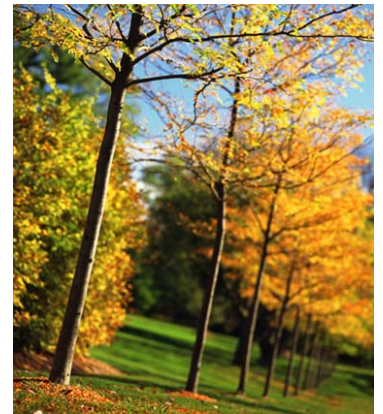
Lots 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, and 92 New Hampshire Street, City of Lawrence, Douglas County, Kansas, and adjacent right-of-way of alley to the east, adjacent right-of-way of 9th Street to the north, extending approximately 100 feet west from the 9th and New Hampshire Street intersection, and adjacent right-of-way of New Hampshire Street to the west, extending south from 9th Street through the 10th Street intersection.

Exhibit G: Pre-Design Public and Private Infrastructure Construction Cost Estimates

Parking Garage	
General Conditions	\$105,099.00
Underground Concrete Structure (89 Spaces)	\$1,400,000.00
Excavation	\$290,000.00
(2) Overhead Doors w/Access Control System	\$37,000.00
Electrical Distribution to Space	\$60,000.00
Heat/Vent	\$65,000.00
Steel Beams/Stairs/Misc.	\$110,000.00
Elevator/Stops	\$25,000.00
Dry Sprinkler system	\$30,000.00
Subtotal	\$2,122,099.00
2% Cont.	\$42,441.98
5% OH&P	\$106,104.95
5% Arch.	\$106,104.95
Sub-total	\$2,376,750.88
Interest Carry Costs	\$130,721.30
TOTAL Approximate Value	\$2,507,472.18
Site Improvement Costs	
Permit Cost	\$52,000.00
Bond Costs	\$3,000.00
Insurance	\$1,750.00
Project Manager	\$1,500.00
Superintendent	\$4,750.00
Assistant Superintendent	\$3,000.00
Street Lights	\$60,000.00
Dumpsters	\$10,000.00
Job Site Sign	\$1,900.00
Layout	\$5,960.00
Landscaping	\$23,000.00
Paving	\$75,000.00
Site Utilities	\$155,000.00
Safety	\$2,650.00
Equipment	\$2,575.00
Engineering	\$9,050.00
Phase II	\$4,000.00
Westar Fees	\$150,000.00
Wastewater Fees (1.5", 1.5", 1.5", 2",3")	\$83,160.00
Meter Fees, (1.5", 1.5", 1.5", 2",3")	\$67,080.00
Subtotal	\$715,375.00
2% Cont.	\$14,307.50
5% OH&P	\$35,768.75
5% Arch.	\$35,768.75
Sub-total	\$801,220.00
Interest Carry Costs	\$44,067.10
TOTAL Approximate Value	\$845,287.10
Total Parking Costs (from above)	\$2,507,472.18

Total Site Improvement Costs (from above)

\$845,287.10
\$3,352,759.28



Redevelopment Project Financial Feasibility Study

For the 9th and New Hampshire Redevelopment District

City of Lawrence, Kansas

Final June 27, 2012

Table of Contents

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Mission Statement

Springsted provides high quality, independent financial and management advisory services to public and non-profit organizations, and works with them in the long-term process of building their communities on a fiscally sound and well-managed basis.

1. Overview

Statutory Basis and Process

Sections 12-1770 through 12-1780 of the Kansas Statutes ("the Act") provide a means for cities to finance public development and redevelopment costs with incremental real estate taxes and other revenues. The purpose of the Act is to "promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities and to assist in the development and redevelopment of eligible areas within and without a city thereby promoting the general welfare of the citizens of this state..."

A city may exercise the powers conferred under the Act provided that the governing body of the city has adopted a resolution finding that the specific area sought to be developed or redeveloped is an "eligible area" under the Act. In addition, the city must find that the conservation, development or redevelopment of such an area is necessary to promote the general economic welfare of the city.

The proposed redevelopment district boundaries are irregular and extend along the east side of New Hampshire Street from East 10th Street on the South to 8th Street on the North. A map of the redevelopment district is attached hereto as Exhibit I. The district plan for the proposed redevelopment district provides for the redevelopment district to include two project areas, the North and South project areas, which are depicted on the map attached hereto as Exhibit I, the two projects fully encompass the boundaries of the Redevelopment District.

Proposed for development in the South Project Area, is the construction of a four-story mixed-use hotel, commercial, and apartment building with corresponding site improvements, and an underground parking structure. The building is proposed to include approximately 81-hotel units, 8 apartments, and 7,021 square feet of first floor retail space, and a 4,578 square foot restaurant located on the building's roof. The related site improvement costs include; street lights, landscaping, paving, site utilities and utility fees associated with the development. The underground parking structure is proposed to include approximately 114 spaces.

Proposed for development in the North Project Area, is the construction of a seven-story mixed-use commercial and apartment building, with corresponding site improvements, and an underground parking structure. The building is proposed to include approximately 114 rental apartment units, 11,500 square feet of commercial/retail space, and an 11,000 square foot clubhouse space. Site improvements are proposed to be completed in conjunction with the development, though the specific costs are estimates at this point in time. The underground parking structure is proposed to include approximately 120 parking spaces.

On October 2, 2012, the governing body will open the Public Hearing to receive comment regarding the establishment of the Redevelopment District ("the District," see Exhibit I), adoption of the Ordinance No.____ occurred on _____. The general comprehensive plan for the District identifies the potential redevelopment project areas located within the District and the suitability of each such area for redevelopment (see below).

One or more redevelopment projects may be undertaken within each district. The Act requires all projects to be completed within 20 years from the date of the approval of a project plan, with the exception of environmental investigation and remediation projects which must be completed within 20 years from the date the City enters into a consent decree with the Kansas Department of Health and Environment or the U.S. Environmental Protection Agency.

For each redevelopment project undertaken within the District, a project plan ("the Project Plan") must be prepared in consultation with the City-County Planning Commission. The Project Plan must include the following:

1. A summary or copy of the Financial Feasibility Study (this document).
2. A reference to the District Plan for the District.
3. A description and map of the area to be redeveloped.
4. The Relocation Assistance Plan.
5. A detailed description of all buildings and facilities proposed to be constructed or improved.
6. Any other information the City deems necessary to advise the general public of the intent of the Project Plan.

The Feasibility Study

The Financial Feasibility Study will show that a) the Project's benefits, tax increment revenue, and other available revenues under K.S.A. 12-1774(a)(1) are expected to exceed or be sufficient to pay for all Project costs as defined by K.S.A. 12-1773, including the payment of principal and interest of debt used to finance the redevelopment project; and b) the effect, if any, the redevelopment project costs will have on any outstanding special obligation bonds payable from the revenues described in K.S.A. 12-1774(a)(1)(D).

The City is currently considering the establishment of two projects, the South Project Area and the North Project Area ("the Projects", see Exhibit I). Establishment of the Projects is being considered to reimburse the Developer for eligible costs associated with the redevelopment of the South Project Area into a mixed-use hotel, apartment, and commercial building, and the redevelopment of the North Project Area into a mixed-use apartment and commercial building. The Developer is requesting reimbursement for eligible costs associated with site improvements and underground parking structures, for both Project Areas.

The Developer has requested that the City provide tax increment financing (TIF) assistance through pay-as-you-go financing for both Project Areas. The City will determine the total size of the financing based solely on the property and sales tax increment generated by the Projects (property and sales tax increment and inflationary property tax increment from properties within each of the Redevelopment Project boundaries).

In a separate but related matter, the Developer has also requested City authorization to establish a Transportation Development District to assist in financing the construction of the underground parking garage in the South Project Area through a specially levied sales tax. The boundaries of the proposed Transportation Development District will be only those occupied by the South project.

2. General Description of Tax Increment

Tax increment financing for the Project will use both property and sales tax revenues.

Tax increment financing involves the creation of an increment (increase over a base value) in the real estate taxes that are generated from a defined geographic area of a community. Upon establishment of a redevelopment district, the total assessed valuation of all taxable real estate within the district is determined. This valuation is referred to as the district's "Base Year Assessed Valuation." Property taxes attributable to the district's Base Year Assessed Valuation are annually collected and distributed by the county treasurer to the appropriate city, county, school district and all other applicable taxing jurisdictions in the same manner as other property taxes.

As new development occurs within the redevelopment district, the total assessed valuation of the district in any given year will presumably exceed its Base Year Assessed Valuation. Tax increment means that amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation. All tax increment is collected by the county and distributed to the city to be deposited in a "special fund."

Tax increment funds may only be used to pay for specified eligible project costs, including principal and interest on debt used, in whole or in part, to finance projects within a redevelopment district. Such debt includes notes, special obligation bonds, full faith and credit tax increment bonds, and other debt instruments. Tax increment also may be paid to a developer/owner over time as reimbursement for eligible costs incurred up-front. This payment mechanism is commonly referred to as pay-as-you-go financing and may include not only the principal amount of such costs but also all or a portion of the interest accrued thereon.

The City is responsible for determining the amount of sales taxes allocated to the Projects each year based on the Redevelopment Plan. The City intends to capture all sales taxes generated by the taxpayers doing business within the boundaries of the South Project Area attributable to the taxes levied by the City and the County. The City does not anticipate any additional sales taxes generated by properties within the North Project Area. If a substantial change occurs to the properties, additional unforeseen revenues may be generated.

3. Project Descriptions

The South Project:

The 900 New Hampshire project (the “South Project Area”) consists of 3 parcels of land located largely on the east side of New Hampshire Street, between East 9th Street and East 10th Street. The north parcel (900 New Hampshire), located on the southeast corner of E. 9th Street and New Hampshire Street, is proposed to be redeveloped into a mixed-use hotel, apartment and commercial project. This parcel is classified as commercial and has a statutory property classification rate of 25.0%. The developer has ownership of the site and will demolish any existing structures for the redevelopment.

The two additional parcels in the project are both exempt from taxation, with one parcel owned by the City, and the other by a non-profit entity. These parcels are included to allow for the funding of City expenses related to the potential acquisition of the non-profit owned parcel and the expansion of the existing City Arts Center. These parcels are projected to remain exempt from taxation for the duration of the proposed TIF District.

The total Base Year Assessed Valuation of the South Project Area as assessed in 2012 for taxes payable in 2012/2013, is estimated at \$62,227, based on the 2012 assessment (see Exhibit II for individual parcel details).

Based on development plans provided by the Developer, Springsted has estimated the South Project’s total fair market value upon completion in 2014 (assessed January 1, 2015) at \$6,870,042, and the total assessed value at \$1,567,540. The property tax increment generated in any given year will be determined by the South Project’s increase in Current Assessed Valuation over its Base Year Assessed Valuation (value as of January 1, 2012).

Based on projected sales activity provided by the Developer, Springsted has estimated the South Project’s total taxable sales at \$5,047,966 by 2015. The sales tax increment generated in any given year will be determined by the City and be equal to the amount generated by the taxpayers doing business within the boundaries of the South Project Area.

The North Project:

The North project (the “North Project Area”) consists of 2 parcels of land located largely on the east side of New Hampshire Street, between East 8th Street and East 9th Street. The two parcels, located on the northeast corner of E. 9th Street and New Hampshire Street, are proposed to be redeveloped into a mixed-use apartment and commercial project. These parcels are classified as commercial and have a statutory property classification rate of 25.0%. The developer has ownership of the site and will demolish any existing structures for the redevelopment.

The total Base Year Assessed Valuation of the North Project Area as assessed in 2013 for taxes payable in 2013/2014, is estimated at \$250,000 (see Exhibit II for individual parcel details). While the Developer has purchased the two parcels in the North Project Area, at the time of the most recent assessment the parcels were owned by a gas utility. Therefore, the Developer’s estimate of a Base Year Assessed Valuation of \$250,000 is used for the purposes of projecting TIF revenue.

Based on development plans provided by the Developer, Springsted has estimated the South Project’s total fair market value upon completion in 2014 (assessed January 1, 2015) at \$17,042,639, and the total assessed value at \$2,229,903. The property tax increment generated in any given year will be determined by the South Project’s increase in Current Assessed Valuation over its Base Year Assessed Valuation (as of January 1, 2013).

The Developer is not assuming any taxable sales generated in the North Project Area; however if substantial changes occur, additional unforeseen revenues may be generated.

4. Projected Revenues (Benefits)

Tax Increment Revenue

Increased Assessed Value

The City has the ability to use up to 100% of the property tax increment generated by the Project based on its increase in Current Assessed Valuation over its Base Year Assessed Valuation, as is illustrated below for the Projects at full assessment in 2015.

South Project		
Projected Total Fair Market Value <u>(1/1/2015)</u>	<u>Class/Rate</u>	Projected Total Assessed Value <u>(1/1/2015)</u>
\$5,759,147	CU/25.00%	1,439,787
\$1,110,895	RES/11.50%	127,753
\$9,030,690	EQ/0.0%	<u>0</u>
	Original Assessed Value	<u>(62,227)</u>
	Increased Assessed Value	1,505,313

North Project		
Projected Total Fair Market Value <u>(1/1/2015)</u>	<u>Class/Rate</u>	Projected Total Assessed Value <u>(1/1/2015)</u>
\$2,000,000	CU/25.00%	500,000
\$15,042,639	RES/11.50%	<u>1,729,903</u>
	Original Assessed Value	<u>(250,000)</u>
	Increased Assessed Value	1,979,903

The Developer estimates that the Total Assessed Value of the Project will increase at approximately 2.0% annually over the life of the Projects. Exhibit II (Assumptions Report) details many of the assumptions used in the projection of values and tax increments for both Projects. Column 4 in Exhibit III (Projected Property and Sales Tax Increment & TDD) shows the projected Increased Assessed Valuation of each Project over its maximum duration.

Property Tax Rates

In order to determine the amount of tax increment generated by the Projects in any given year, the Increased Assessed Value of the Project must be multiplied by the sum of the tax rates for all TIF-applicable tax authorities for that year.

For taxes levied in 2010 and payable in 2010/2011, this total TIF-applicable rate is 103.823 mills. We assume this rate remains fixed through-out the term of the District.

<u>Jurisdiction</u>	TIF Eligible Mill Rate (<u>2010/2011</u>)
City of Lawrence	28.612
Douglas County	35.773
497 Lawrence S/D	<u>39.438</u>
Total	103.823

Projected Property Tax Increment

The projected tax increment generated for each of the Projects over a 20-year period is shown in column 10 of Exhibit III (Projected Property and Sales Tax Increment & TDD). If the South project is approved by the City in October, 2012, the Project would be eligible to receive increment in 2014/2015 through the first-half 2032/2033 collection. No public hearing date has been set for the North project, but collections are projected through the first-half 2032/2033 collection. The tax increment projections are based on Base Year assessed valuations, increased assessed valuations, and tax rates as previously discussed. It is assumed in all years of the report that 100% of property taxes are paid when due. The total property tax increments projected for the South Project are \$3,389,654; total property tax increments projected for the North Project are \$4,430,765. The cumulative amount of property tax increments projected for the entire District is \$7,820,419.

Projected Sales Tax Increment

The South Project is also eligible to receive sales tax generated within the District. The City currently levies a 1.55% sales tax and the County also levies a 1% sales tax. The City intends to collect all City and County sales taxes generated by taxpayers doing business in the South Project area, to pay for redevelopment project costs, including the payment of debt service. The County will need to separately approve the collection of the sales tax revenue for the South Project.

The Developer projects initial year annual sales of \$5,579,209 from the hotel and commercial uses. Springsted projects that up to 30% of the hotel portion of the sale revenue may be exempt from taxation per Kansas Statute. Therefore, the estimated annual taxable sales are decreased to \$5,047,966.

Based on a 2.55% applicable sales tax rate (City and County) the stabilized annual sales tax revenue projected is \$128,723. The Developer expects total and taxable sales to increase by 2.0% annually for the term of the project resulting in total projected sales tax revenue over the term of the Project of

\$2,820,622 (see column 9 of Exhibit III – Projected Property and Sales Tax Increment & TDD for further details).

The combination of property and sales tax increment projected for the South Project area over the 20-year period starting from approval is estimated to be \$6,210,276. The total property and sales tax increment generated for the entire District is \$10,641,041.

Projected TDD Sales Tax Revenues

As stated earlier, the Developer is requesting the establishment of a Transportation Development District, for the South Project Area, which would impose a 1.0% sales tax to defer eligible project costs. The revenue projected from the sales tax is estimated at \$1,178,224 over the maximum 22-year collection period.

Developer Revenue

The Developer will fund the total anticipated cost of the combined private developments of \$44,897,960 up front. The expected funding will be comprised of \$33,673,469 of private debt and \$11,224,491 of equity.

City Administration

At this time, the City does not anticipate retaining tax increment for administrative and capital expenditures outside of the Project.

5. Projected Expenditures (Costs)

Based on current projections, the Developer estimates the total cost for the South Project site improvements are \$845,287 and an additional \$2,507,472 for the underground parking. The Developer will finance these South Area Project costs of \$3,352,759, and request reimbursement from TIF/TDD revenue, including interest expense. The Developer is seeking reimbursement for interest expenses on their financing of this amount, at an interest rate of 5.5%; which equates to an approximate interest expense of \$2,058,529. The total projected private expenditures in the South Project area are \$5,411,288 including the estimated interest expense.

Additionally, the City is anticipating reimbursing project costs incurred in the development of the existing parking garage of \$850,000 as well as a \$900,000 for the Lawrence Arts Commons. This brings the total project costs to be funded from TIF/TDD revenue in the South Project Area to \$7,161,288.

The projected total TIF/TDD revenue of \$7,388,499 generated in the South Project Area is sufficient to cover this total cost of \$7,161,288. The funding of the \$850,000 of costs incurred in the development of the existing parking garage, will be required to come from the TDD revenue generated by the South Project Area. The South Project Area TDD revenue projection totals \$1,178,224, which will be used first to fund the \$850,000 City project cost, with any remaining TDD revenue available for the reimbursement of Developer TDD eligible costs. The City anticipates at a minimum 5% of annual South Project Area TIF revenue will be dedicated to repayment of the \$900,000 Lawrence Arts Commons project costs.

If South Project Area revenues are received at a greater rate than currently project, the amount of interest expense incurred in reimbursing the Developer will be reduced due to the shorter repayment period. For the purposes of estimating the total increment cost, we have assumed an amortization for the term of the projected revenues at the Developer's requested interest rate of 5.5%.

The Developer estimates the total cost of the North Project site improvements are \$800,000 and an additional \$2,639,400 for the underground parking. The Developer will finance these North Area Project costs of \$3,439,400, and request reimbursement from TIF revenue, including interest expense. The Developer is seeking reimbursement for interest expenses on their financing of this amount, at an interest rate of 5.5%; which equates to an approximate interest expense of \$2,111,725. The total projected private expenditures in the North Project Area are \$5,551,125 including the estimated interest expense.

However, the projected North Area TIF revenue is insufficient to cover this total cost and the Developer will only be reimbursed up to the revenue collected during the statutory term of the Project. There will be no obligation on the part

of the City to contribute any shortfalls required neither to finance the total \$3,439,400 construction cost nor to reimburse for interest expenditures.

Based on current projections, the City has the ability to expend a maximum of \$4,430,765 in North Project Area property and sales tax increment to assist the Project. The Developer has requested the City pledge property tax increment generated from the North Project Area to reimburse them for the total cost of the public infrastructure improvements and construction of the parking garage estimated at a total \$3,439,400 cost, plus interest expense.

The City proposes to execute a Redevelopment Agreement outlining a pledge of 100% of the property tax increment generated by the North Project Area, up to an amount necessary to reimburse the Developer for \$3,439,400 of construction costs, plus interest expense. The pledge will continue until 2033, the North Project Area's required termination date.

Although the City does not anticipate issuing tax increment bonds, if a request is made, the City will not pledge its full faith and credit (general obligation) to the payment of any such tax increment bonds.

6. Conclusions

South Project Area Conclusions

The Act requires that the Financial Feasibility Study demonstrate that a Project's benefits and other available revenues are expected to equal or exceed all Project costs.

The project benefits can be described in two forms: a) the amount of total revenues and other contributions received over the 20 year term of the Project; and b) the amount of project costs which can be financed by the revenues received over the applicable term. This second category represents the amount of bonds issued supported by the future revenues plus the other financial contributions.

The South Project Area Costs are here defined as the TIF/TDD eligible expenditures budgeted to complete the South Project and are estimated to total \$7,161,288, including estimated interest expenditures.

As to the total future revenues and other contributions, the available TIF revenues of the South Project through the first-half 2032/2033 collection are expected to be \$6,210,276, and the available TDD revenues of the Project through 2035 are expected to be \$1,178,224 (combined revenue of \$7,388,499).

The total South Project Area Costs to be funded are \$7,161,288, including interest costs over the statutory period, which the estimated South Project Area TIF/TDD revenues exceed. Given the assumptions and representations of various parties to the process, this feasibility study concludes that the South Area Project benefits, which include projected TIF/TDD revenue are sufficient to pay the South Area Project costs.

The Act also requires a determination of the effect the redevelopment project will have on any outstanding bonds supported by local transient guest and local sales and use taxes. The proposed South Area Redevelopment Project does not currently generate any sale or use taxes and therefore the approval of the collection of sales taxes within the Project area does not have any effect on any outstanding obligations.

North Project Area Conclusions

The Act requires that the Financial Feasibility Study demonstrate that a Project's benefits and other available revenues are expected to equal or exceed all Project costs.

The project benefits can be described in two forms: a) the amount of total revenues and other contributions received over the 20 year term of the Project; and b) the amount of project costs which can be financed by the revenues received over the applicable term. This second category represents the amount of bonds issued supported by the future revenues plus the other financial contributions.

The North Project Area Costs are here defined as the TIF eligible expenditures budgeted to complete the North Project and are estimated to total \$5,551,125, plus interest expenditures.

As to the total future revenues and other contributions, the available TIF revenues of the North Project Area through the first-half 2032/2033 collection are expected to be \$4,430,765. The Developer is requesting \$3,439,400, plus interest over the statutory period. The revenue is sufficient to reimburse the total North Area project costs, exclusive of interest reimbursement. Repayment of the total North Area Project Costs, and the estimated interest reimbursement of \$2,111,725, would require a Developer contribution of \$1,120,360 to complete the site improvements and parking garage, including financing costs related to debt issued to initially construct the project.

Given the assumptions and representations of the various parties to the process, this feasibility study concludes that the North Area Project benefits which include projected TIF revenue and Developer contributions of at least \$1,120,360 are sufficient to pay the project costs.

The Act also requires a determination of the effect the redevelopment project will have on any outstanding bonds supported by local transient guest and local sales and use taxes. The proposed North Area Redevelopment Project does not currently generate any sale or use taxes and therefore the approval of the collection of sales taxes within the Project area does not have any effect on any outstanding obligations.

EXHIBIT I MAP OF PROPOSED REDEVELOPMENT DISTRICT & PROJECTS

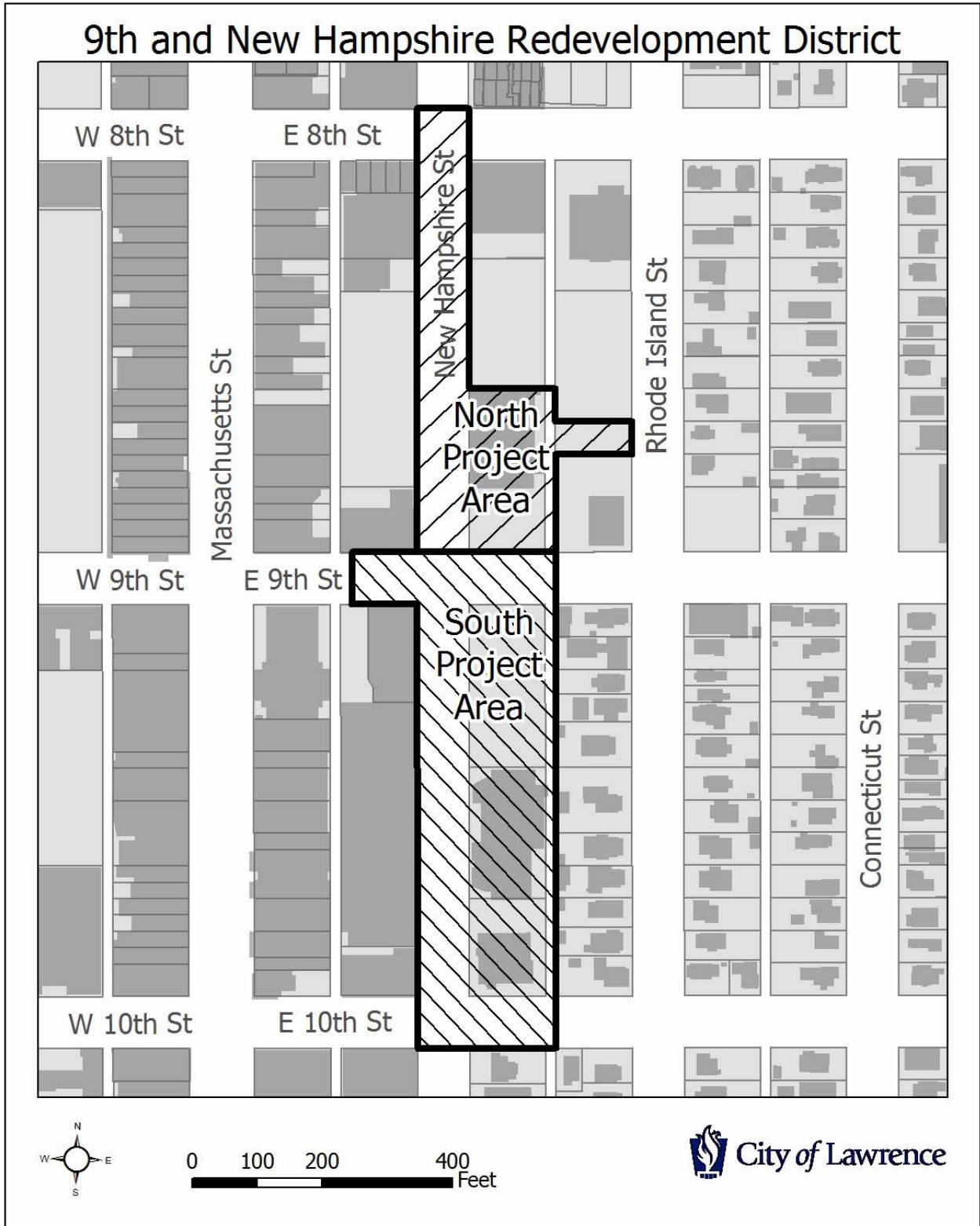


Exhibit II
TIF District and Redevelopment Project Area Assumptions

**City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
South Project Area**

Original Assessed Value (1/1/12)		62,227
<hr/>		
<u>2010/11 Mill Rates</u>	<u>Total</u>	<u>TIF Applicable</u>
State of Kansas	1.500	0.000
Douglas County	35.773	35.773
City of Lawrence	28.612	28.612
497 Lawrence S/D	27.738	27.738
497 Lawrence S/D-Gen	20.000	0.000
497 Lawrence S/D-Bond	11.700	11.700
Total	125.323	103.823
		<i>Assume fixed rate</i>
<hr/>		
Property TIF Inflation Rate:	2.00%	
Sales Tax Inflation Rate:	2.00%	

**City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
North Project Area**

Original Assessed Value (1/1/12)	250,000	
<hr/>		
<u>2010/11 Mill Rates</u>	Total	TIF Applicable
State of Kansas	1.500	0.000
Douglas County	35.773	35.773
City of Lawrence	28.612	28.612
497 Lawrence S/D	27.738	27.738
497 Lawrence S/D-Gen	20.000	0.000
497 Lawrence S/D-Bond	11.700	11.700
Total	125.323	103.823
		<i>Assume fixed rate</i>
<hr/>		
Property TIF Inflation Rate:	2.00%	
Sales Tax Inflation Rate:	NA	

Exhibit II - Page 3 of 7

City of Lawrence, Kansas Redevelopment Tax Increment Financing District South Project Area

Assess 2007

Property Owner	Address	Parcel ID	2012 Appraised			2012 Assessed			Class
			Land	Building	Total	Land	Building	Total	
9-10 LLC	900 New Hampshire	023-079-31-0-20-18-002.00-0	518,560	-	518,560	-	62,227	62,227	VU
City of Lawrence	940 New Hampshire	023-079-31-0-20-18-006.01-0	388,580	7,900,940	8,289,520	-	-	-	EQ
Salvation Army	946 New Hampshire	023-079-31-0-20-18-010.00-0	371,250	369,920	741,170	-	-	-	EQ
Totals			1,278,390	8,270,860	9,549,250	-	62,227	62,227	
Estimated Assess 2012 Values			1,278,390	8,270,860	9,549,250	-	62,227	62,227	
(Base Year of Redevelopment TIF District)			Total Appraised Value			Total Assessed Value			

Exhibit II - Page 4 of 7

City of Lawrence, Kansas Redevelopment Tax Increment Financing District North Project Area

Assess 2007

Property Owner	Address	Parcel ID	2012 Appraised ¹⁾			2012 Assessed			Class
			Land	Building	Total	Land	Building	Total	
9-10 LLC	100 E 9th Street	023-079-31-0-20-15-006.00-0	1,000,000	-	1,000,000	250,000	-	250,000	CU
9-10 LLC	100 E 9th Street	023-079-31-0-20-15-008.00-0							
Totals			1,000,000	-	1,000,000	250,000	-	250,000	
Estimated Assess 2012 Values			1,000,000	-	1,000,000	250,000	-	250,000	
(Base Year of Redevelopment TIF District)					Total Appraised Value			Total Assessed Value	

1) Market value assumption provided by Developer. Will need to work with County to finalize market value as property is converted from gas utility.

Exhibit II - Page 5 of 7

**City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
South Project Area**

Property Tax Increment

Base and Current Values	<u>Appraised</u>	<u>Assessed</u>		
Base - Assess January 1, 2012	9,549,250	62,227		
Est. Base - Assess January 1, 2012	9,549,250	62,227		
Assessment Rate:	25.00%	11.50%	25.00%	25.00%

Project Components	<u>Hotel Units</u> <i>81 rooms</i>	<u>Apartment Units</u> <i>8 units</i>	<u>Retail Uses</u>	<u>Parking Uses</u>	<u>Total</u> 89
Estimated Square Footage	41,194	7,130	14,131	included in	62,455
Estimated Appraised Value per Unit/SF ¹⁾	\$49,383	\$138,862	\$124	NA	
Total Appraised Value	4,000,000	1,110,895	1,759,147	included in	6,870,042
Total Assessed Value	1,000,000	127,753	439,787	included in	1,567,540

New Development Appraised	<u>Hotel Units</u>	<u>Apartment Units</u>	<u>Retail Uses</u>	<u>Parking Uses</u>	
January 1, 2013	0%	0%	0%	NA	
January 1, 2014	85%	85%	85%	NA	
January 1, 2015	100%	100%	100%	NA	

Estimated Appraised Value	<u>Hotel Units</u>	<u>Apartment Units</u>	<u>Retail Uses</u>	<u>Parking Uses</u>	<u>Total</u> <u>Appraised</u>
January 1, 2013	0	0	0	included in	0
January 1, 2014	3,400,000	944,261	1,495,275	included in	5,839,536
January 1, 2015	4,000,000	1,110,895	1,759,147	included in	6,870,042

Estimated Assessed Value	<u>Hotel Units</u>	<u>Apartment Units</u>	<u>Retail Uses</u>	<u>Parking Uses</u>	<u>Total</u> <u>Assessed</u>
January 1, 2013	0	0	0	included in	0
January 1, 2014	850,000	108,590	373,819	included in	1,332,409
January 1, 2015	1,000,000	127,753	439,787	included in	1,567,540

Tax Increment	<u>Total</u> <u>Assessed</u>	<u>Original</u> <u>Assessed</u>	<u>Captured</u> <u>Assessed</u>
Assess 2013/Distrib 2014	62,227	62,227	0
Assess 2014/Distrib 2015	1,332,409	62,227	1,270,182
Assess 2015/Distrib 2016	1,567,540	62,227	1,505,313

NOTES:

1) For estimating the hotel value we used the Developer's assumption of \$4,000,000. For the apartment and retail uses we have estimated the value based on cap rates 7.0% and 7.5% respectively.

Exhibit II - Page 6 of 7

**City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
North Project Area**

Property Tax Increment

Base and Current Values	<u>Appraised</u>	<u>Assessed</u>
Base - Assess January 1, 2012	1,000,000	250,000
Est. Base - Assess January 1, 2012	1,000,000	250,000
Assessment Rate:	11.50%	25.00%

Project Components	<u>Apartment Units</u>	<u>Commercial Uses</u>	<u>Parking Uses</u>	<u>Total</u>
	<i>114 units</i>			114
Estimated Square Footage	106,500	22,500	included in	129,000
Estimated Appraised Value per Unit/SF ¹⁾	\$131,953	\$89	NA	
Total Appraised Value	15,042,639	2,000,000	included in	17,042,639
Total Assessed Value	1,729,903	500,000	included in	2,229,903

New Development Appraised ²⁾	<u>Apartment Units</u>	<u>Commercial Uses</u>	<u>Parking Uses</u>
January 1, 2013	0%	0%	NA
January 1, 2014	50%	50%	NA
January 1, 2015	100%	100%	NA

Estimated Appraised Value	<u>Apartment Units</u>	<u>Commercial Uses</u>	<u>Parking Uses</u>	<u>Total Appraised</u>
January 1, 2013	0	0	included in	0
January 1, 2014	7,521,320	1,000,000	included in	8,521,320
January 1, 2015	15,042,639	2,000,000	included in	17,042,639

Estimated Assessed Value	<u>Apartment Units</u>	<u>Commercial Uses</u>	<u>Parking Uses</u>	<u>Total Assessed</u>
January 1, 2013	0	0	included in	0
January 1, 2014	864,952	250,000	included in	1,114,952
January 1, 2015	1,729,903	500,000	included in	2,229,903

Tax Increment	<u>Total Assessed</u>	<u>Original Assessed</u>	<u>Captured Assessed</u>
Assess 2013/Distrib 2014	250,000	250,000	0
Assess 2014/Distrib 2015	1,114,952	250,000	864,952
Assess 2015/Distrib 2016	2,229,903	250,000	1,979,903

NOTES:

1) For estimating the hotel value we used the Developer's assumption of \$2,000,000 for the bank portion, and a 7.5% cap rate for the remaining commercial portion. For the apartment we have estimated the value based on a cap rate of 7.0%.

2) Assumes project construction begins in 2013, with 50% constructed in 2013, and remaining portion completed in 2014. This assumption should be discussed further.

Exhibit II - Page 7 of 7

City of Lawrence, Kansas Redevelopment Tax Increment Financing District South Project Area

Sales Tax Assumptions for Sales Tax Increment and Transportation Development District (TDD) Sales Tax

Base Information		Sales Tax Rates				
Existing Project Sales Taxes:	NA	<i>City of Lawrence</i>				1.55%
		<i>Douglas County</i>				1.00%
		Total TIF Sales Tax				2.55%
			TDD			1.00%
Project Information		<u>Hotel Units</u>	<u>Apartment Units</u>	<u>Retail Uses</u>	<u>Parking Uses</u>	<u>Total</u>
Estimated Annual Sales: ¹⁾		1,770,809	NA	3,808,400	inc. in hotel	5,579,209
Locally Taxable Portion of Retail Sales: ²⁾		70.00%	NA	100.00%	inc. in hotel	
Estimated Taxable Sales:		1,239,566	NA	3,808,400	inc. in hotel	5,047,966
Estimated TIF Sales Tax Rate: ³⁾		2.55%	NA	2.55%	inc. in hotel	
Estimated TDD Sales Tax Rate:		1.00%	NA	1.00%	inc. in hotel	
Estimated Annual TIF Sales Tax Collections: (at stabilized occupancy and sales)		31,609	NA	97,114	inc. in hotel	128,723
Estimated Annual TDD Revenues: (at stabilized occupancy and sales)		17,708	NA	38,084	inc. in hotel	55,792
Sales Tax Collections:	Estimated % of Total	Estimated Taxable Sales	TIF Sales Tax	TDD Sales Tax		
Taxes collected in 2013	0.00%	0	0	0		
Taxes collected in 2014 ³⁾	50.00%	2,523,983	64,362	27,896		
Taxes collected in 2015	100.00%	5,047,966	128,723	55,792		
Taxes collected in 2016	100.00%	5,047,966	128,723	55,792		

NOTES:

- 1) We have used the numbers presented by the Developer for total revenue from sales.
- 2) We have assumed that only 70% of the hotel sales will be taxable because of the targeted audience of University/College entities which are exempt from sales tax if paid for by the University/College. This topic needs further discussion.
- 3) We have assumed that the sales revenue is only 50% in the first year.

**EXHIBIT III
PROJECTED PROPERTY TAX AND SALES TAX
INCREMENT & TDD**

City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
South Project Area
Projected Property Tax and Sales Tax Increment & TDD

TIF Year	Assess & Tax Levy Year	Tax Distrib. Year	Total Assessed (a)	Original TIF Assessed Value (5)	(3) - (4) Increased Assessed Value (6)	Projected Property Tax Increment (b) (7)	Projected Taxable Sales (c) (8)	100% Projected Sales Tax Increment (d) (9)	Projected Total Increment (10)	Projected TDD Revenue (e) (11)
0	2012	2013	62,227	62,227	0	0			0	
1	2013	2014	62,227	62,227	0	0	0	0	0	0
2	2014	2015	1,332,409	62,227	1,270,182	131,874	2,523,983	64,362	196,236	25,240
3	2015	2016	1,567,540	62,227	1,505,313	156,286	5,047,966	128,723	285,009	50,480
4	2016	2017	1,598,890	62,227	1,536,663	159,541	5,148,926	131,298	290,839	51,489
5	2017	2018	1,630,868	62,227	1,568,641	162,861	5,251,904	133,924	296,785	52,519
6	2018	2019	1,663,486	62,227	1,601,259	166,247	5,356,942	136,602	302,850	53,569
7	2019	2020	1,696,755	62,227	1,634,528	169,702	5,464,081	139,334	309,036	54,641
8	2020	2021	1,730,690	62,227	1,668,463	173,225	5,573,363	142,121	315,346	55,734
9	2021	2022	1,765,304	62,227	1,703,077	176,819	5,684,830	144,963	321,782	56,848
10	2022	2023	1,800,610	62,227	1,738,383	180,484	5,798,527	147,862	328,347	57,985
11	2023	2024	1,836,623	62,227	1,774,396	184,223	5,914,497	150,820	335,043	59,145
12	2024	2025	1,873,355	62,227	1,811,128	188,037	6,032,787	153,836	341,873	60,328
13	2025	2026	1,910,822	62,227	1,848,595	191,927	6,153,443	156,913	348,839	61,534
14	2026	2027	1,949,039	62,227	1,886,812	195,894	6,276,512	160,051	355,945	62,765
15	2027	2028	1,988,019	62,227	1,925,792	199,942	6,402,042	163,252	363,194	64,020
16	2028	2029	2,027,780	62,227	1,965,553	204,070	6,530,083	166,517	370,587	65,301
17	2029	2030	2,068,335	62,227	2,006,108	208,280	6,660,684	169,847	378,128	66,607
18	2030	2031	2,109,702	62,227	2,047,475	212,575	6,793,898	173,244	385,819	67,939
19	2031	2032	2,151,896	62,227	2,089,669	216,956	6,929,776	176,709	393,665	69,298
20	2032	2033	2,194,934	62,227	2,132,707	110,712	7,068,371	180,243	290,955	70,684
21	2033	2034	2,238,833	2,238,833	0	0	7,209,739	0	0	72,097
22	2034	2035	2,283,609	2,283,609	0	0	7,353,934	0	0	55,155
Totals						\$3,389,654		\$2,820,622	\$6,210,276	\$1,178,224
									Total Revenue:	7,388,499

(a) Assumes 900 New Hampshire TIF Project value will be assessed according to completion schedule on previous page, with inflation commencing in Levy Year 2016

(b) Assumes 100% collection of property taxes. Since TIF expenditures are limited to 20 years from City approval of Project estimated to occur October 2012, final collection would be first-half 2032 collection, distributed to City in January 2033. Assume 2010/2011 Mill Levy Rate held flat.

(c) Assumes 50% of sales are taxable in first year.

(d) Since TIF expenditures are limited to 20 years from City approval of Project estimated to occur in October 2012, revenue in assess 2032/pay 2033 is the first 9 months.

(e) Assumes collection of TDD sales tax revenue for maximum term allowed, with note issued in 2013, would mature 22 years later in 2034 (assume first six months of revenue in 2034)

City of Lawrence, Kansas
Redevelopment Tax Increment Financing District
North Project Area
Projected Property Tax and Sales Tax Increment & TDD

TIF Year	Assess & Tax Levy Year	Tax Distrib. Year	Total Assessed (a)	Original TIF Assessed Value	(3) - (4) Increased Assessed Value	Projected Property Tax Increment (b)	Projected Taxable Sales (c)	Projected Sales Tax Increment	Projected Total Increment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
0	2012	2013	250,000	250,000	0	0			0
1	2013	2014	250,000	250,000	0	0	0	0	0
2	2014	2015	1,114,952	250,000	864,952	89,802	0	0	89,802
3	2015	2016	2,229,903	250,000	1,979,903	205,560	0	0	205,560
4	2016	2017	2,274,502	250,000	2,024,502	210,190	0	0	210,190
5	2017	2018	2,319,992	250,000	2,069,992	214,913	0	0	214,913
6	2018	2019	2,366,391	250,000	2,116,391	219,730	0	0	219,730
7	2019	2020	2,413,719	250,000	2,163,719	224,644	0	0	224,644
8	2020	2021	2,461,994	250,000	2,211,994	229,656	0	0	229,656
9	2021	2022	2,511,234	250,000	2,261,234	234,768	0	0	234,768
10	2022	2023	2,561,458	250,000	2,311,458	239,983	0	0	239,983
11	2023	2024	2,612,687	250,000	2,362,687	245,301	0	0	245,301
12	2024	2025	2,664,941	250,000	2,414,941	250,726	0	0	250,726
13	2025	2026	2,718,240	250,000	2,468,240	256,260	0	0	256,260
14	2026	2027	2,772,605	250,000	2,522,605	261,904	0	0	261,904
15	2027	2028	2,828,057	250,000	2,578,057	267,662	0	0	267,662
16	2028	2029	2,884,618	250,000	2,634,618	273,534	0	0	273,534
17	2029	2030	2,942,310	250,000	2,692,310	279,524	0	0	279,524
18	2030	2031	3,001,156	250,000	2,751,156	285,633	0	0	285,633
19	2031	2032	3,061,180	250,000	2,811,180	291,865	0	0	291,865
20	2032	2033	3,122,403	250,000	2,872,403	149,111	0	0	149,111
Totals						\$4,430,765		\$0	\$4,430,765

(a) Assumes North TIF Project value will be assessed according to completion schedule on previous page, with inflation commencing in Levy Year 2016

(b) Assumes 100% collection of property taxes. Since TIF expenditures are limited to 20 years from City approval of Project estimated to occur _____, 2012, final collection would be first-half 2032 collection, distributed to City in January 2033. Assume 2010/2011 Mill Levy Rate held flat.

(c) Assumes no sales generated by development

Memorandum

City of Lawrence

City Manager's Office

**TO: Douglas County Commission
Craig Weinaug, County Administrator**

FROM: Diane Stoddard, Assistant City Manager

**CC: David L. Corliss, City Manager
Cynthia Wagner, Assistant City Manager
Britt Crum-Cano, Economic Development Coordinator**

Date: August 18, 2012

**RE: Consider Resolution Committing the new incremental County
Share of the County-Wide Sales Tax to the 9th and New
Hampshire Tax Increment Financing (TIF) District**

As the County Commission is aware, the City has established a TIF District on the northeast and southeast corners of 9th and New Hampshire. The TIF plans propose a mixed-use hotel project on the southeast corner and a mixed-use apartment building on the north. Additionally, the project envisions possible City acquisition of the Salvation Army tract for future Arts Center use as an Arts Commons space. The developer has requested that the incremental revenues to be captured from the development include ad valorem taxes, and city and county sales taxes. The issue before the County Commission is consideration of a resolution that would commit the new incremental county share of the county-wide sales tax. The south project, which includes the mixed-use hotel project, is really the only part of the project that is anticipated to generate sales tax. The feasibility study projects that of the total \$2.8 million in incremental sales tax revenue over the 20 year period, \$1.1 million is related to the county-wide sales tax. The county-wide sales tax is distributed between the cities and the county on a formula set by the legislature. Of the \$1.1 million in total county sales tax, approximately \$468,253 is projected to be the county share or share that goes to other jurisdictions within the county.

State statute does not require the County to take any action regarding the creation of the TIF District itself. However, bond counsel has recommended that the County consider a resolution committing the incremental new county share of the county-wide sales tax to the project. Additionally, the statute does allow for the County or School District to veto the creation of the TIF district within a 30 day period after the district is created upon a finding that the district would harm the County/School District. The 30 day period will expire on August 24.

Suggested Motion:

City staff respectfully requests that the County Commission consider a motion to adopt a resolution committing the incremental new County share of the county-wide sales tax to the 9th and New Hampshire TIF project.

Sales Tax Projections: South Project

Year	Taxable Sales	City (1.55%)	Countywide Sales Tax			Total Sales Tax Revenues
			Lawrence Share of Countywide Sales Tax*	Other County Jurisdictions**	Countywide Sales Tax Total (1%)	
0	\$0	\$0	\$0	\$0	\$0	\$0
1	\$0	\$0	\$0	\$0	\$0	\$0
2	\$2,523,983	\$39,122	\$14,555	\$10,685	\$25,240	\$64,362
3	\$5,047,966	\$78,243	\$29,110	\$21,369	\$50,480	\$128,723
4	\$5,148,926	\$79,808	\$29,692	\$21,797	\$51,489	\$131,298
5	\$5,251,904	\$81,405	\$30,286	\$22,233	\$52,519	\$133,924
6	\$5,356,942	\$83,033	\$30,892	\$22,677	\$53,569	\$136,602
7	\$5,464,081	\$84,693	\$31,510	\$23,131	\$54,641	\$139,334
8	\$5,573,363	\$86,387	\$32,140	\$23,594	\$55,734	\$142,121
9	\$5,684,830	\$88,115	\$32,783	\$24,065	\$56,848	\$144,963
10	\$5,798,527	\$89,877	\$33,439	\$24,547	\$57,985	\$147,862
11	\$5,914,497	\$91,675	\$34,107	\$25,038	\$59,145	\$150,820
12	\$6,032,787	\$93,508	\$34,789	\$25,538	\$60,328	\$153,836
13	\$6,153,443	\$95,378	\$35,485	\$26,049	\$61,534	\$156,913
14	\$6,276,512	\$97,286	\$36,195	\$26,570	\$62,765	\$160,051
15	\$6,402,042	\$99,232	\$36,919	\$27,102	\$64,020	\$163,252
16	\$6,530,083	\$101,216	\$37,657	\$27,644	\$65,301	\$166,517
17	\$6,660,684	\$103,241	\$38,410	\$28,196	\$66,607	\$169,847
18	\$6,793,898	\$105,305	\$39,179	\$28,760	\$67,939	\$173,244
19	\$6,929,776	\$107,412	\$39,962	\$29,336	\$69,298	\$176,709
20	\$7,068,371	\$109,560	\$40,761	\$29,922	\$70,684	\$180,243
Total Over Term	\$110,612,615	\$1,714,496	\$637,873	\$468,253	\$1,106,126	\$2,820,622

Notes:

*Based on 0.576673 ratio released for Lawrence by Kansas Department of Revenue, Office of Policy and Research, Countywide Tax Ratios Effective July 1, 2012

**Based on 0.423327 ratio released for all other Douglas County jurisdictions by Kansas Department of Revenue, Office of Policy and Research, Countywide Tax Ratios Effective July 1, 2012