

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda

WEDNESDAY, JANUARY 6, 2010

2:00 p.m.-Administrative session to discuss planning issues/goals

4:00 p.m. – County Commission Meeting

-Convene

-Consider approval of the minutes of November 6, November 11, November 18 and December 9, 2009.

-Proclamation to honor Ellie Ott

CONSENT AGENDA

- (1)(a) Consider approval of Commission Orders;
- (b) Consider approval of speed limit revision for portion of Route 1057 (Keith Browning);
- (c) Consider approval of agreements for housing inmates in the Douglas County Jail for the cities of Eudora and Baldwin City (Ken McGovern);
- (d) Consider request from Tenant's to Home Owners (TTH) to execute an application to receive an historic tax credit for the City of Lawrence and to transfer the tax credit to the Lawrence Preservation Alliance once received (Rebecca Buford);
- (e) Consider approval to authorize the Public Works Directors to purchase recast concrete culvert to replace Structure No. 20.10N-01.00E. (Keith Browning); and
- (f) Acknowledgement of fee reports for October and November 2009.

REGULAR AGENDA

- (2) Consider approval of lease agreement with the Lawrence Douglas County Bioscience Authority of the West Lawrence Labs building. (Weinaug and Diane Stoddard)
- (3) Executive Session on an item for the purpose of consultation with staff for the purpose of discussing security matters. The justification is so as to not jeopardize security measures that protect public buildings of Douglas County.
- (4) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment
- (5) Adjourn

THURSDAY, JANUARY 7, 2010

-8:00-9:30 a.m. – Lawrence Chamber of Commerce Legislative Preview Breakfast at Eldridge Chrystal Room (Two or more Commissioners may attend. No Commission meeting will be held)

TUESDAY, JANUARY 12, 2010

-7:00-8:30 p.m. -Public Officials briefing by KDOT on US-56 Corridor Management Plan at the Baldwin City Library (Two or more Commissioners may attend. No meeting will be called to order.)

WEDNESDAY, JANUARY 13, 2010

6:35 p.m. – Consider approval of allocating the Douglas County Recovery Zone Facility Bonds to the City of Lawrence, Kansas for the purpose of issuing Recovery Zone Facility Bonds to Packerware Corporation (Berry Plastics) (Roger Zalneraitis)

-Consider approval of resolution creating road right-of-way along N 800 Road alignment from E 1050 Road to 500 feet west of E 1050 Road (Keith Browning)

WEDNESDAY, JANUARY 20, 2010

WEDNESDAY, JANUARY 27, 2010

FRIDAY, JANUARY 29, 2010

-6:00-9:00 Lawrence Chamber of Commerce Annual Meeting at the Lawrence Holiday Inn (two or more Commissioners may attend, no Commission meeting will be held.)

***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.*

**COUNTY COMMISSION GOALS WORK SESSION
ON PLANNING & DEVELOPMENT
JANUARY 06, 2010**

2 - 4 PM

COMMISSION ROOM

The goals session is an opportunity for Commissioners to identify where there are commonalities and differences in their individual philosophies and approaches:

1. to how rural areas of the County should develop;
2. to how existing regulations are used to guide and shape rural development; and
3. to what should be possible in the context of rural development but existing regulations and policies do not (or do not adequately) allow or address

The documents and regulations most commonly identified in the guidance and shaping of development patterns are:

- ❑ Land Use & Transportation Plans [Horizon 2020 and T2030]
- ❑ Capital Improvements Plan [typically a 5 year plan for infrastructure improvements]
- ❑ Zoning Regulations
- ❑ Subdivision Regulations
- ❑ Access Management Standards

Throughout the course of the previous year, eleven development-related topics have come up in the discussion of specific planning applications before the Commission. These topics are listed below and may provide a starting point for discussion. Items are grouped under three broad categories. Asterisks represent the broader topics that lend themselves to more philosophical discussions.

Comprehensive Planning and Regulatory Authority

- Scope of regulatory authority over uses and development in the unincorporated area through zoning, subdivision and access management regulations *
- Urban Growth Area boundaries – purpose as a growth management tool and as a regulatory process to define standards for rural residential property development and land division *
- Extra-territorial authority – degree of control over urban fringe area by cities in County through the use of Zoning Regulations and/or land division procedures (Subdivision Regulations) *

Regulations, Processes and Procedures

- Administrative or Commission authority – for revising or amending site plans and conditional use permits [regulations currently do not allow for administrative review and approval of site plans or CUPs]
- Regulatory approaches for non-residential land uses: conditional zoning, overlay zoning, conditional use permits; standard zoning
- Subdivision Regulations appeals procedures for land division process [e.g., denied Certificates of Survey]
- Property owner notification – posting of signs or mailed notices for site plan applications & zoning variances

Roads and Access Management

- Access Management Standards – variable requirement for entrance permit for residential development
- New public roads – to access land-locked parcels or to create additional road frontage for development

Agricultural Use Regulations

- Ag. Specific Regulations – to allow uses “by-right” (e.g., right-to-farm laws) and for agri-industries/uses

Floodplain Regulations and Development Standards

- No Adverse Impact – highest standard for regulating development within FEMA floodplain



Comprehensive Planning and Regulatory Authority:

1. Scope of regulatory authority over uses and development in the unincorporated area through zoning, subdivision and access management regulations

Commissioners and Commissions in the past have had differing opinions about what requests should come before them for review and how much flexibility they should have in responding to citizen requests related to land use and development.

Requirements that are adopted by amendments to the Comprehensive Plans, Zoning and Subdivision Regulations are less subject to the interpretation or implementation of individual commissions or commissioners. Revisions to the comprehensive plan and land use regulations are required by local and state statutes to follow specific public hearing and due process procedures. Jointly adopted documents require review and approval of amendments by other governing bodies. These types of requirements are less flexible in response to an individual's request but more predictable, dependable, and stable for long-term commitments to or by the Commission and public.

Requirements that are adopted by resolution of the Commission as county policy can be placed on any County Commission agenda for review, revision, or revocation. These types of requirements can be more responsive to an individual concern, economic issue, or public opinion and tend to fluctuate more over a Commission's term; however, they are less dependable, predictable and are inappropriate for long-term investment decisions to or by the Commission and public.

The desire to be responsive to the current issues raised is weighed against the desire to create a stable and dependable environment for investments. The question all Commissions face is: At what level is the Commission comfortable in being responsive to current issues and public concerns? Regulations provide a long-term approach to issues, where policies and moratoriums provide short-term solutions and greater flexibility in responding to immediate issues or concerns. Each Commission has had to find their own comfort zone with this dilemma.

2. Urban Growth Area boundaries – purpose as a growth management process and as a regulatory tool to define standards for rural residential property development and land division

The establishment of an Urban Growth Boundary (also called an Urban Growth Area) is to limit urban sprawl by requiring higher development densities to occur within the boundary and restricting development densities outside or beyond the boundary. The Urban Growth Area in Horizon 2020 was initially developed based on future (20 year) service areas for water and wastewater expansion from the City of Lawrence. The boundary was amended through compromises made in response to political and economic development influences. There is no direct correlation between the current Urban Growth Area and the master plans for expansion of Lawrence's water and wastewater utilities that were adopted in 2005-06.

Grant Township is the only township within the County that is located entirely within the Urban Growth Area or within the incorporated limits of Lawrence.

The Subdivision Regulations adopted in 2006 apply different development standards to residential parcels based on their location within or outside the Urban Growth Area of incorporated cities in the County. Baldwin City and Lawrence are the only 2 cities that have adopted a distinctive Urban Growth boundary. Owners of property along the extreme southern and western edges of the Urban Growth

Area have been required to develop build out plans as part of the administrative process for creating land divisions for residential development. Based on the local and national economies, it is unlikely that the city of Lawrence will extend public infrastructure or services to these extreme edges by 2020.

What is the optimum long-range planning period – 15 year, 20 years, 50 years?

3. Extra-territorial authority – degree of control over urban fringe area by cities in County through the use of Zoning Regulations and/or land division procedures (Subdivision Regulations)

Lawrence and Douglas County have jointly adopted Subdivision Regulations based on a jointly adopted Comprehensive Plan, Horizon 2020. Land within the Urban Growth Area of Lawrence is regulated by a different set of development standards in the jointly adopted Subdivision Regulations than are other portions of the unincorporated area. This is a use of the extra-territorial authority available to incorporated cities through the state planning statutes. Each of the three smaller cities in Douglas County – Baldwin City, Eudora, and Lecompton – have expressed to the current or previous Commission a desire to extend their zoning and/or subdivision regulations to areas lying within their immediate planning area or Urban Growth Area. In 2008, Baldwin City adopted a new comprehensive land use plan with a defined Urban Growth Area. Their staff assists in review of land divisions and zoning requests within the 3-mile extra-territorial area around the city, but the land use regulations and zoning applied to this area are the County's not Baldwin City's.

State Statutes provide the process for a city to request transfer of review and approval authority from the County to the City over the subdivision and platting of land within a city's Urban Growth Area. This is not a discretionary act where the County can deny a request.

A different authority is required for the transfer of zoning review and approval requests from a zoned county to a city for lands within an Urban Growth Area. The County Commission must unzone land prior to transfer of zoning authority to a city. This places the authority for review and approval of a change in zoning for a rural property in the hands of a governing body that has no electoral accountability to the landowners. Past Commissioners have found this delegation of authority not acceptable.

Eudora is in the process of updating their comprehensive land use plan with the help of Bucher Willis consultants. It is likely that both Baldwin City and Eudora will request/seek in 2010 to establish their own joint city-county Planning Commission for implementation of their own Subdivision Regulations within the Urban Growth Areas of each respective city.

The County Commission may find it useful to have a generic discussion of the merits of establishing extra-territorial subdivision and/or zoning authority before a specific request is made to them.

Regulations, Processes and Procedures:

4. Administrative or Commission authority – for revising or amending site plans and conditional use permits [regulations currently do not permit allow for administrative review and approval of site plans or CUPs]

The Zoning Regulations do not provide for staff review and approval of minor revisions to site plans or conditional use permits. The lack of this authority can place an untimely burden on a property owner when they must wait for a County Commission meeting to present and discuss their proposed revision. Granting this authority would enable staff to be more responsive to property/business owners and would enable businesses to be more responsiveness to neighbors' requests (e.g. for additional landscaping, a change in security lighting location, proximity of a building to an adjacent property line, lowering the height of a berm, or fencing instead of cutting down an existing tree buffer).

This is one example of a minor change to existing Zoning Regulations that could be included in a comprehensive update to the 40+ year old set of regulations or that could be pursued in a timelier manner by initiation of a text amendment to the appropriate sections in the Regulations.

The umbrella issue this raises is how much regulatory authority does the Commission feel comfortable transferring to staff and what land use decisions do they want to retain.¹

5. Regulatory approaches for non-residential land uses: conditional zoning, overlay zoning, conditional use permits, standard zoning

Zoning is a tool for implementing adopted goals and policies in the comprehensive plan. Zoning has evolved into a different type of tool for communities that need different approaches to land use regulation. There are two basic types of zoning: Euclidean and Cumulative (which includes: Performance-based, Incentive-based, and Form-based codes). In Douglas County, our Zoning Regulations are a combination of Euclidean (isolating different using) and Cumulative (permitting less residential uses with non-residential/non-farm uses). The tools available in the Zoning Regulations for permitting non-residential/non-farm uses are: Conditional Zoning, Overlay Zoning, Conditional Use Permits, and standard Zoning districts. Other tools that can be used but are not in the County's Zoning Regulations are: Performance-based, Form-based, or Incentive-based districts. Form and Performance-based regulations could be added to the Zoning Regulations as a Planned Unit Development option or they could be the basis of an entire rewriting of the existing regulations. A brief overview of the existing tools the County has to address zoning and change in use requests when the application is for an unusual, unique, or use not listed in the business (B-1, B-2, B-3) or industrial (I-1, I-2, I-3 & I-4) districts follows:

Zoning Tools	Merits	Limitations
Conditional Zoning	- Can address unique situations - Can limit uses within zoning district - More permanent than conditional approval - Tied to a specific location not to an operator or owner	- Allowed uses not readily available to the public from a paper map - Requires additional staff monitoring to ensure site use is restricted to use restrictions - Long-term application is untested – no institutional record
Conditional Use Permit	- Can be granted for a single use or related uses - Approval can be tied to an operator – not automatically transferrable - Ties approval to a site plan where external impacts on neighboring properties can be addressed - Is reviewable and revocable when seriously out of compliance with conditions of approval - Requirements of underlying zoning apply in addition to	- Non-permanent; a time limit can be placed on the approval - Site plan modifications require County Commission approval - Expanding existing use or structures may require a new public hearing - CUP locations are only available on a GIS interactive map, not on a paper map - Approval is non-transferrable and does not move when the use or operation moves

¹ A related issue for another session is a more thorough review of the Zoning Regulations and authorities within that document and the changes or additions that need to be included in revisions to the Zoning Regulations, which have been placed on hold by county/planning staff pending this discussion with the County Commission.

Zoning Tools	Merits	Limitations
	conditions of approval	
Overlay Zoning	- Creates additional performance or development standards to the requirements of the underlying zoning district - Allows development based on standards within the portion of floodplain that is not the floodway	Applies different standards to similarly zoned property when one is within floodplain designation and the other is outside the 1% chance flood designation
Standard Zoning Districts* * cannot address unlisted uses	- List of similar and/or compatible uses allow flexibility in land development - Zoning runs with the land, not typed to operator or time limit	- Some uses within a district are more objectionable than others but all are permitted - Districts establish minimum standards that may not address specific concerns of neighbors

6. Subdivision Regulations Appeals procedures for land division process [denied Certificates of Survey]

The Subdivision Regulations have an appeals procedure to the County Commission for denial of a Certificate of Survey. The Subdivision Regulations also have an appeals procedure to the Planning Commission for individuals seeking a variance from the literal provisions of the regulations and from decisions by the Planning Director. The previous Commission was interested in defining when an appeal should be to them and when it should be taken to the Planning Commission.

7. Property owner notification – posting of signs or mailed notices for site plan applications & zoning variances

Site Plans and BZA variance requests are planning items that do not go through the Lawrence-Douglas County Planning Commission public hearing and notification process. The city of Lawrence has adopted a public notice requirement for site plans and BZA variance requests that includes mailing letters to adjacent property owners and posting of sign(s) on the subject property along public roads as a means of notification to the public of a proposed development or variance request. The public notification process for site plans is not a requirement in the county's regulations or in state statutes. The mailing of adjacent property owner letters for BZA variance applications is a requirement in both the county's regulations and state statutes.

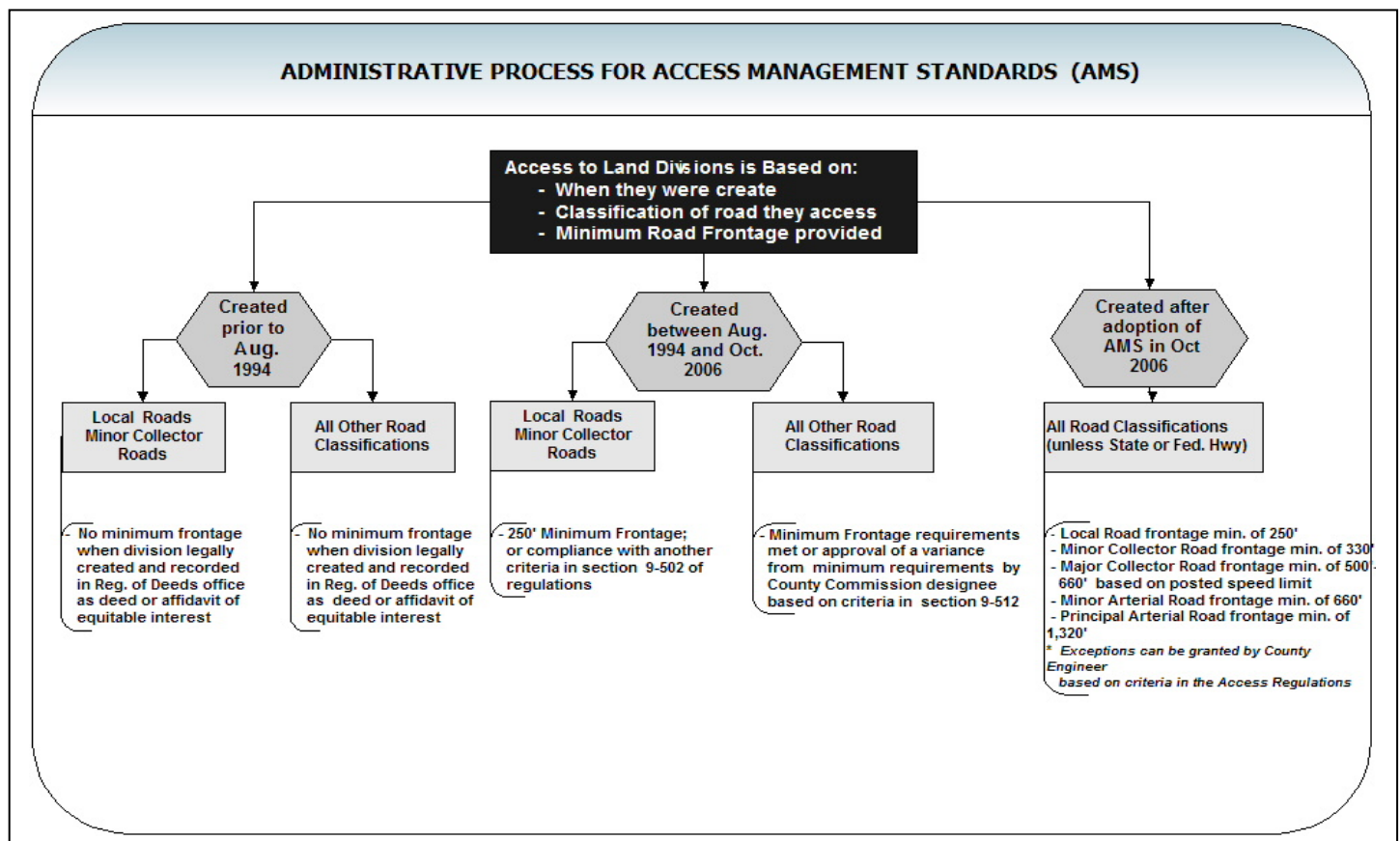
Roads and Access Management:

8. Access Management Standards – variable requirement for entrance permit for residential development

Access Management Standards – The objectives of implementing access standards are to enable access to land uses while maintaining roadway safety and mobility through controlling access location, design, spacing and operation.

Staff recently provided the Commission with a memo summarizing how the access management regulations are administered and staff recommendations for clarification between text and legislative intent of these regulations.

Administration of the access management regulations involves answers to three primary questions: when was the land division created; what classification of road does the division take access from; and how much road frontage has the parcel. The following graphic depicts the administrative process followed in response to these three questions:



9. New public roads – to access land-locked parcels or to create additional road frontage for development

Purpose of 2008 Policy on development of new roads:

- to require fiscal impact analysis on creation of new roads and specifically to add to the road petition process a long-range planning requirement
- to discourage development of new road created solely for developer's purpose of creating more land parcels for residential development in rural area

Reasons for new roads²:

- to access land-locked property
- to provide means for developing interior of a property by creation of new road frontage³
- to assume responsibility (primarily maintenance) for existing shared drive or private road
- to consolidate multiple access points along a major road (major collector or arterial) through development of a frontage road

Private Roads, Private Drives, Cross Access Easements, Implied Easements, and Shared Entrances:

- Private roads were individually approved by the County Commission for up to 3 homes prior to November 1998. Current regulations do not permit the creation of new private roads in the unincorporated area.

² Roads that have been classified as "minimum maintenance" or as "paper roads" (roads not traveled) are not required to go through the new road process to be developed or to be brought into compliance with current county road standards.

³ Vacated roads no longer have road right-of-way or road easement and are required to go through the new road process prior to development to current county road standards.

- Private drives are driveways that serve no more than one residential or farm property. They are exclusive of farm access roads.
- Cross access easements are a requirement of the Cluster Development Process, a land division process permitted within the Urban Growth Area, which consolidates the development's access to one point from a public road. All individual Residential Development Parcels created take access internal to the development from the cross access easement. They serve a similar purpose of clustering access as did private roads.
- Implied easements occur when landlocked property is sold without a specific written cross access easement to a public road.
- Shared entrances allow two driveways to converge at a point within the public right-of-way/road easement to share a single road cut.

Agricultural Use Regulations:

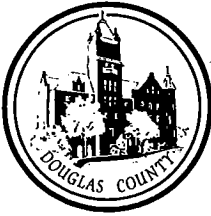
10. Ag. Specific Regulations – to allow uses “by-right” (e.g., right-to-farm laws) and for agri-industries/uses

Summary will be provided at the work session for this item.

Floodplain Regulations and Development Standards:

11. No Adverse Impact – highest standard for regulating development within FEMA floodplain

Summary will be provided at the work session for this item.



DOUGLAS COUNTY PUBLIC WORKS

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Lawrence, KS 66044-3350
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Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KB*

Date : December 15, 2009

Re : Consent Agenda approval of speed limit revision for portion of Route 1057

Until early fall 2009, the three-mile section of Route 1057 between Route 460 (N 700 Road) and Route 458 (N 1000 Road) was posted for a 50-mph speed limit. The 3.5 miles of Route 1057 between Route 458 and K-10 highway is posted for 55-mph. Prompted by a citizen inquiry, we reviewed the 50-mph speed limit between Route 460 and Route 458 to determine if appropriate.

The 50-mph speed limit, established by Resolution No. 89-40, was due to a change in design standards immediately prior to construction of Route 1057 improvements in the late 1980's. The three miles of Route 1057 between Route 460 and Route 458 were reconstructed at that time as part of a federal aid project. Although the improvements were designed to 55-mph, KDOT required us to post the road segment for 50-mph due to design standards revisions immediately prior to construction.

After measuring traffic speeds and reviewing the road's alignment against current design standards, this department recommends raising the speed limit for this portion of Route 1057 to 55-mph. The attached memo report provides further explanation.

Pavement markings for this section of Route 1057 were repainted during the last week of September 2009. The no passing zones were striped assuming a 55-mph speed limit. New 55-mph speed limit signing was also installed at that time.

The County Code allows only the BOCC to establish speed limits and parking regulations. The County Code allows the Public Works Director to establish all other traffic regulations (i.e. STOP signs, bridge weight limits, turn restrictions, etc.). The County Code also allows the Public Works Director (and/or the Sheriff) to establish temporary speed limits.

Action Required: Consent Agenda approval of the attached resolution (1) establishing a 55-mph speed limit for Route 1057 (E 1900 Road) from Route 460 (N 700 Road) to Route 458 (N 1000 Road), and (2) repealing Resolution No. 89-40, which established a 50-mph speed limit for the same roadway section.

MEMO TO: Keith Browning

FROM: Terese Gorman

TAG

DATE: June 3, 2009

SUBJECT: Speed Limit on Route 1057 between Route 460 and Route 458

Douglas County received a question from a citizen through our website about the reason the speed limit on Route 1057 between Route 460 and Route 458 was posted as 50 mph and the remainder of Route 1057 was posted as 55 mph. This portion of Route 1057 was reconstructed in the late 1980's by the Kansas Department of Transportation (KDOT). After design of the roadway improvements was complete but before construction was finished, KDOT directed us to post a lower speed limit of 50 mph even though the plans had been designed for a 55 mph speed limit. This was due to changes in AASHTO design standards during this time period between plan design and construction completion. We have reviewed these 1980's plans and analyzed the vertical alignment based on current AASHTO design standards. All of the crest vertical curves meet the current design standards for 55 mph. There is one sag vertical curve on the north leg of Route 1057 intersection with Route 460, where the sag vertical curve does not achieve proper headlight sight distance for 55 mph in nighttime driving conditions. But this north leg of Route 1057 is approaching a stop condition with Route 460. There is also a sag vertical curve just south of N 800 Rd that provides slightly less than the desirable headlight sight distance for 55 mph during nighttime driving conditions.

Traffic data was collected on Route 1057 north of Route 460 in April 2008. At that time, there were 734 vehicles per day with an 85th percentile speed of 58 mph. In March 2008, traffic data was collected on Route 1057 south of Route 458. At that time, there were 958 vehicles per day with an 85th percentile speed of 59 mph.

As a comparison, traffic data was collected in April 2008 on Route 1057 north of Route 458. This traffic data said there were 1369 vehicles per day with an 85th percentile speed of 58 mph. The portion of Route 1057 north of Route 458 to K-10 is posted as 55 mph. Traffic data was also collected in April 2008 on Route 1057 north of N 1300 Rd. At this location, there were 1749 vehicles per day with an 85th percentile speed of 58 mph.

The traffic data that we collected last year indicates that drivers do not perceive the characteristics of this three mile section of Route 1057 between Route 460 and Route 458 differently then the section of Route 1057 between Route 458 and K-10, and are driving the entire roadway as a typical county route with a speed limit of 55 mph. Our engineering analysis of the vertical alignment of the 1980's plans show that the vertical alignment does not present any significant concerns with posting a speed limit of 55 mph on this section of Route 1057. It would be reasonable to change the speed limit from 50 mph to 55 mph on Route 1057 between Route 460 and Route 458.

RESOLUTION NO. _____

A RESOLUTION REPEALING A 50 MILES PER HOUR MAXIMUM SPEED LIMIT AND ESTABLISHING A 55 MILES PER HOUR MAXIMUM SPEED LIMIT ON A PORTION OF COUNTY ROUTE 1057 (E 1900 ROAD) IN EUDORA TOWNSHIP

WHEREAS, pursuant to K.S.A. 8-1560, local authorities may determine and declare a reasonable and safe maximum speed limit for roads under their jurisdiction; and

WHEREAS, on the basis of an engineering and traffic investigation performed by the Douglas County Public Works Department the maximum speed limit for the following described county road or highway, to-wit:

a portion of E 1900 Road, also known as County Route 1057, beginning at the intersection of N 700 Road (County Route 460), thence north along the centerline of E 1900 Road a distance of approximately three miles to the intersection of N 1000 Road (County Route 458), and terminating at said point;

as set by K.S.A. 8-1558, is reasonable and safe under the conditions found to exist on the above described road under the jurisdiction of this Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS that a speed limit of 55 miles per hour is hereby determined and declared to be a reasonable and safe speed limit for the above described road. Resolution No. 89-40, which established a speed limit of 50 miles per hour for the above described road, is hereby repealed.

This speed limit shall become effective when appropriate signs giving notice thereof are erected upon the road above described.

ADOPTED this _____ day of _____, 20__.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Nancy Thellman, Chair

ATTEST:

Jim Flory, Member

County Clerk

Mike Gaughan, Member

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**AGREEMENT FOR HOUSING OF INMATES IN
DOUGLAS COUNTY JAIL**

THIS AGREEMENT ("Agreement") is entered into between the **BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS** (hereinafter referred to as "County") and **THE CITY OF EUDORA, KANSAS** (hereinafter referred to as "Eudora") effective the 14 day of December 2009.

RECITALS

WHEREAS, County operates the Douglas County Jail (hereinafter the "Facility"); and

WHEREAS, Eudora desires to contract with and pay County to house one or more inmates in the Facility as a place of confinement; and

WHEREAS, the County is desirous of accepting and keeping in its custody such inmate(s) in the Facility for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, K.S.A. 12-2908, as amended, authorizes any municipality to contract with any other municipality to perform any governmental service, activity or undertaking which each municipality is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by K.S.A. 12-2908, as amended.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **DURATION AND NUMBER OF INMATES**

This Agreement shall become effective January 1, 2010 and end December 31, 2010, subject to earlier termination as provided by Section 2 herein. This Agreement may be renewed for successive twelve-month periods by written addenda executed by the parties hereto under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require Eudora to have inmates housed continuously in the Facility.

2. **TERMINATION**

This Agreement and any renewals may be terminated by written notice of either party, provided that termination shall become effective 15 working days after receipt of such notice. Within said 15 working days, Eudora agrees to remove its inmate(s) from the Facility. Upon termination of this Agreement Eudora shall pay County compensation for maintenance of each of Eudora's inmates equal to the County's average cost per inmate per day that Eudora's inmates are housed at the Facility, together with all medical expenses of all of Eudora's inmates.

3. **MAILING ADDRESSES**

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

County:	Administrative Lieutenant Douglas County Jail 3601 E. 25th Street Lawrence KS 66046-5616
With a Copy to:	Douglas County Sheriff Judicial and Law Enforcement Center 111 E. 11 th Street Lawrence KS 66044
Eudora:	Municipal Court Clerk P.O. Box 650 Eudora KS 66025
With Copy to:	Chief of Police, Eudora P.O. Box 650 Eudora KS 66025

4. COMPENSATION

County agrees to accept and house inmates for compensation at the daily rate equal to one-half of the County's per inmate average cost over the prior three years, which is agreed to be \$67.87 per day. The daily rate for any renewal terms of this Agreement will be determined in a similar manner, based upon the most recent three calendar years. Eudora also will pay for out-of-pocket medical expenses as set forth in Paragraph 9 below.

5. RESPONSIBILITY FOR INMATE'S CUSTODY

It shall be the responsibility of the County to confine the inmate or inmates; to provide treatment, including the furnishing of food and all necessary medical and hospital services and supplies; to provide for their physical needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to provide conditions of confinement and treatment in compliance with all constitutionally protected rights of inmates; to make certain that they receive no special privileges and that the sentence and orders of the committing court are faithfully executed, provided that nothing herein contained shall be construed to require County, or any of its agents, to provide treatment, facilities or programs for any inmate confined pursuant to this Agreement, which the County does not provide for similar inmates not confined pursuant to this Agreement.

6. FURLOUGHS AND PASSES

County agrees that no furloughs or passes shall be granted to any inmate(s) housed pursuant to this Agreement without written authorization of Eudora.

7. INMATE ACCOUNTS

County shall establish and maintain an account for each inmate received from Eudora and shall credit to such account all money which is received and shall make disbursements, debiting such account in accurate amounts for the inmate's personal needs. Disbursements shall be made in a manner consistent with all other inmates at the Facility. The County shall be accountable to Eudora for such inmate funds. At the inmate's death, release from incarceration or return to either Eudora, or indefinite release by the court, the inmate's money shall be paid to the inmate or the inmate's estate, as the case may be.

8. INSURANCE

County shall maintain a liability insurance policy with an insurance company authorized to sell policies in the State of Kansas or that is otherwise acceptable to Eudora. Said coverage shall cover the operations of the jail and law enforcement activities of County. Upon execution of this Agreement and each renewal thereof, County shall provide a Certificate of Insurance to Eudora certifying the existence of said insurance coverage in an amount not less than \$500,000 per occurrence.

9. MEDICAL SERVICES

(a) County shall provide inmates from Eudora with medical and dental treatment consistent with constitutionally protected rights of confined inmates, the financial burden of which shall be borne by Eudora. Except in the event of a medical emergency, County shall obtain consent from a representative of Eudora prior to incurring expenses with third-party medical providers, provided that if Eudora refuses to consent to such third-party treatment, Eudora shall indemnify and hold County harmless from any claim, liability, or judgment of the inmate predicated upon the failure to provide medical care and/or County may release the inmate from custody if County determines that continued confinement without medical care creates an unacceptable risk to County.

(b) An adequate record of all such services shall be kept by County for review by Eudora upon request. Any medical or dental services of major consequence shall be reported to Eudora as soon as time permits. County agrees to provide and Eudora agrees to receive and use any records containing "protected health information" (as defined in the Health Insurance Portability and Accountability Act of 1996) (the "Act") solely for purposes of payment of medical or dental services. Eudora further agrees:

- i. to implement and use appropriate safeguards to prevent the use and disclosure of protected health information for purposes except as permitted by this Agreement or the Act (determined as if the Act applies to County and/or Eudora);
- ii. to incorporate any corrections to protected health information when notified of such correction;
- iii. to not use or disclose protected health information that would violate the regulations promulgated pursuant to the Act if done by the County (determined as if the Act applies to County);
- iv. to require any subcontractor or agent by whom protected health information is received from the other party to agree to the same restrictions and conditions that apply to Eudora with respect to such information;
- v. to provide access to non-duplicative protected health information to the individuals which are the subject of that information in accordance with the regulations promulgated pursuant to the Act including the right of inspection and

copying (determined as if the Act applies to County and/or Eudora);

vi. to give the County access to data pertaining to protected health information for the purpose of auditing compliance with Eudora's obligations under this Agreement or the Act;

vii. to make available its respective internal practices, books and records relating to the use and disclosure of protected health information to the United States Department of Health and Human Services and its duly authorized representatives (determined as if the Act applies to County and/or Eudora).

(c) Should medical or dental services of third party medical providers be required, Eudora agrees to compensate County dollar for dollar any amount expended or cost incurred in providing the same; provided that nothing herein shall preclude Eudora from retaking the ill or injured inmate(s) and seeking the necessary medical attention; and provided further that Eudora is not responsible for medical or dental expenses related to injuries suffered by an inmate which were inflicted by other inmates or County personnel while in the custody of the County and attributable to gross negligence on the part of the County.

10. DISCIPLINE

County shall have physical control over and power to execute disciplinary authority over all inmates from Eudora. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the laws of the State of Kansas or the procedural and substantive due process rights guaranteed by the Constitution of the United States.

11. RECORDS AND REPORTS

(a) Eudora shall forward to County before or at the time of delivery of inmate(s): an admission classification, and any findings or indications of any special consideration or treatment programs that have been recommended or prescribed.

(b) County shall keep all necessary and pertinent records concerning such inmate(s). Subject to the provisions of Section 9, during the inmate's incarceration in the Facility, Eudora shall be entitled to receive, and upon request, be furnished with copies of any such reports or records.

12. REMOVAL FROM THE JAIL

An inmate of Eudora legally confined in the Facility shall not be removed therefrom by any person without a written order from Eudora or a court of competent jurisdiction. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of the County. In the event of any removal for such an emergency cause, County shall inform Eudora of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

13. ESCAPES

In the event any such inmate(s) shall escape from custody, County will use all reasonable means to recapture the inmate(s). The escape shall be reported immediately to Eudora. County shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own jurisdiction. Any cost in connection therewith shall be chargeable to and borne by County.

14. DEATH OF AN INMATE

(a) In the event of the death of an inmate, County shall comply with all statutory notification and investigatory requirements. Eudora shall receive copies of any records made at or in connection with such notifications.

(b) County shall immediately notify Eudora of the death of an inmate, furnish information as requested and follow the instructions of Eudora with regard to the disposition of the body. The body shall be delivered to the Douglas County Coroner for autopsy if required by then applicable state law or County jail policies. Once delivered to the Douglas County Coroner, or upon death if the body is not required to be delivered to the Douglas County Coroner, the body shall not be released except on written order of the appropriate officials of Eudora, unless Eudora's written order violates County's or the Coroner's other legal obligation for disposition of the body. As between Eudora and the County, all expenses relative to any necessary preparation of the body and shipment or express charges shall be paid by Eudora. Eudora and County may arrange to have County take care of burial and all matters related to or incidental thereto, and all such expenses shall be paid by Eudora. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative of the person for the disposition of the deceased or for any expenses connected therewith.

(c) Eudora shall receive a certified copy of the death certificate for any of its inmates who have died while in the Facility.

15. RETAKE OF INMATES

Eudora Police Department will retake any inmate(s), upon request of County, within ten (10) days after receipt of such request to retake. In the event the confinement under which any of the said inmate(s) is (are) terminated for any reason, Eudora agrees to accept delivery of the inmate(s) at the Facility and at Eudora's expense, return such inmate(s) to the jurisdiction of Eudora.

16. RESPONSIBILITY FOR LEGAL PROCEEDINGS

Provided the terms of this Agreement have not been breached by County, Eudora agrees to indemnify County for any judgment, liability or damages not covered by insurance arising from any action or proceeding involving the custody of any inmate(s) from Eudora, provided that any such action or proceeding does not arise from any allegations of any intentional, willful or negligent act on the part of County or any Sheriff, deputy, officer, agent or employee thereof.

17. JAIL ADMINISTRATION AND MANAGEMENT

County further represents and warrants that its jail facility and its administration and management of inmates substantially complies with all constitutionally guaranteed rights of confined inmates and will continue to comply throughout the term of this Agreement and further agree to notify Eudora of any material changes in the physical structure or policies and procedures of the operation of the jail.

18. BILLING AND PAYMENT

Following each calendar quarter, County shall provide the Eudora Municipal Court with an itemized bill, listing all names of inmates who were housed, the number of days housed, and the dollar amount due for each inmate (the "Invoice"). Eudora agrees to pay County the amount due within 30 days of receipt of the Invoice.

19. RIGHT TO REFUSE

(a) County shall have the right to refuse to accept any inmate(s) from Eudora when, in the opinion of County, its inmate census is at capacity or so near capacity that there is a substantial risk that, through usual operation of the Facility, the legal capacity limits of the Facility might be reached or exceeded.

(b) County shall further have the right to refuse to accept any inmate(s) from Eudora who, in the judgment of County, has a history of serious medical problems or who presents a substantial risk of escape from the Facility or a substantial risk of injury to other persons or property.

20. TRANSPORTATION

Eudora inmates incarcerated by the County in the Facility pursuant to this Agreement shall be transported to County by and at the expense of Eudora Police Department and shall be returned, if necessary, to Eudora by Eudora Police Department and at Eudora's expense. Except for transportation to a medical facility in the case of a medical emergency, County is not responsible for transportation of Eudora inmates under this Agreement. Eudora shall reimburse County for any actual expenses incurred in transport of an inmate if, in fact, transportation of an inmate by County personnel becomes necessary.

21. MISCELLANEOUS

This Agreement contains the entire agreement of the parties hereto and all prior agreements, negotiations and discussions are merged herein. This Agreement may not be modified except by a written modification signed by both parties hereto. Any determination by a Court that one term or provision of this Agreement is invalid or unenforceable shall not void or invalidate the entire agreement. The laws and administrative rules and regulations of the State of Kansas shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement.

22. CASH BASIS LAW

The parties to this Agreement acknowledge that this Agreement is subject to the Cash Basis Law, K.S.A. 10-1101 *et seq.*, and that the obligation of Eudora to compensate the County shall be subject to and in accordance with the Cash Basis Law.

[remainder of page intentionally blank, signature page to follow]

IT WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

COUNTY:

Board of County Commissioners of Douglas County,
Kansas

ATTEST:

By: _____
Nancy Thellman, Chair

County Clerk

EUDORA:

CITY OF EUDORA, KANSAS

By: Scott Hopson
Scott Hopson, Mayor

ATTEST:

Donna Oleson
City Clerk

**AGREEMENT FOR HOUSING OF INMATES IN
DOUGLAS COUNTY JAIL**

THIS AGREEMENT ("Agreement") is entered into between the **BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS** (hereinafter referred to as "County") and **THE CITY OF BALDWIN CITY, KANSAS** (hereinafter referred to as "Baldwin City") effective the _____ day of _____ 2009.

RECITALS

WHEREAS, County operates the Douglas County Jail (hereinafter the "Facility"); and

WHEREAS, Baldwin City desires to contract with and pay County to house one or more inmates in the Facility as a place of confinement; and

WHEREAS, the County is desirous of accepting and keeping in its custody such inmate(s) in the Facility for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, K.S.A. 12-2908, as amended, authorizes any municipality to contract with any other municipality to perform any governmental service, activity or undertaking which each municipality is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by K.S.A. 12-2908, as amended.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **DURATION AND NUMBER OF INMATES**

This Agreement shall become effective January 1, 2010 and end December 31, 2010, subject to earlier termination as provided by Section 2 herein. This Agreement may be renewed for successive twelve-month periods by written addenda executed by the parties hereto under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require Baldwin City to have inmates housed continuously in the Facility.

2. **TERMINATION**

This Agreement and any renewals may be terminated by written notice of either party, provided that termination shall become effective 15 working days after receipt of such notice. Within said 15 working days, Baldwin City agrees to remove its inmate(s) from the Facility. Upon termination of this Agreement, Baldwin City shall pay County compensation for maintenance of each of Baldwin City's inmates equal to the County's average cost per inmate per day that Baldwin City's inmates are housed at the Facility, together with all medical expenses of all of Baldwin City's inmates.

3. **MAILING ADDRESSES**

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

County:	Administrative Lieutenant Douglas County Jail 3601 E. 25th Street Lawrence KS 66046-5616
With a Copy to:	Douglas County Sheriff Judicial and Law Enforcement Center 111 E. 11 th Street Lawrence KS 66044
Baldwin City:	Municipal Court P.O. Box 86 803 8 th Street Baldwin City KS 66006
With a Copy to:	Chief of Police, Baldwin City P.O. Box 86 803 8 th Street Baldwin City KS 66006

4. COMPENSATION

County agrees to accept and house inmates for compensation at the daily rate equal to one-half of the County's per inmate average cost over the prior three years, which is agreed to be \$67.87 per day. The daily rate for any renewal terms of this Agreement will be determined in a similar manner, based upon the most recent three calendar years. Baldwin City also will pay for out-of-pocket medical expenses as set forth in Paragraph 9 below.

5. RESPONSIBILITY FOR INMATE'S CUSTODY

It shall be the responsibility of the County to confine the inmate or inmates; to provide treatment, including the furnishing of food and all necessary medical and hospital services and supplies; to provide for their physical needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to provide conditions of confinement and treatment in compliance with all constitutionally protected rights of inmates; to make certain that they receive no special privileges and that the sentence and orders of the committing court are faithfully executed, provided that nothing herein contained shall be construed to require County, or any of its agents, to provide treatment, facilities or programs for any inmate confined pursuant to this Agreement, which the County does not provide for similar inmates not confined pursuant to this Agreement.

6. FURLOUGHS AND PASSES

County agrees that no furloughs or passes shall be granted to any inmate(s) housed pursuant to this Agreement without written authorization of Baldwin City.

7. INMATE ACCOUNTS

County shall establish and maintain an account for each inmate received from Baldwin City and shall credit to such account all money which is received and shall make disbursements, debiting such account in accurate amounts for the inmate's personal needs. Disbursements shall be made in a manner consistent with all other inmates at the Facility. The County shall be accountable to Baldwin City for such inmate funds. At either the termination of this Agreement, the inmate's death, release from incarceration or return to either Baldwin City or indefinite release by the court, the inmate's money shall be paid to the inmate or the inmate's estate, as the case may be.

8. INSURANCE

County shall maintain a liability insurance policy with an insurance company authorized to sell policies in the State of Kansas or that is otherwise acceptable to Baldwin City. Said coverage shall cover the operations of the jail and law enforcement activities of County. Upon execution of this Agreement and each renewal thereof, County shall provide a Certificate of Insurance to Baldwin City certifying the existence of said insurance coverage in an amount not less than \$500,000 per occurrence.

9. MEDICAL SERVICES

(a) County shall provide inmates from Baldwin City with medical and dental treatment consistent with constitutionally protected rights of confined inmates, the financial burden of which shall be borne by Baldwin City. Except in the event of a medical emergency, County shall obtain consent from a representative of Baldwin City prior to incurring expenses with third-party medical providers, provided that if Baldwin City refuses to consent to such third-party treatment, Baldwin City shall indemnify and hold County harmless from any claim, liability, or judgment of the inmate predicated upon the failure to provide medical care and/or County may release the inmate from custody if County determines that continued confinement without medical care creates an unacceptable risk to County.

(b) An adequate record of all such services shall be kept by County for review by Baldwin City upon request. Any medical or dental services of major consequence shall be reported to Baldwin City as soon as time permits. County agrees to provide and Baldwin City agrees to receive and use any records containing "protected health information" (as defined in the Health Insurance Portability and Accountability Act of 1996) (the "Act") solely for purposes of payment of medical or dental services. Baldwin City further agrees:

- i. to implement and use appropriate safeguards to prevent the use and disclosure of protected health information for purposes except as permitted by this Agreement or the Act (determined as if the Act applies to County and/or Baldwin City);
- ii. to incorporate any corrections to protected health information when notified of such correction;
- iii. to not use or disclose protected health information that would violate the regulations promulgated pursuant to the Act if done by the County (determined as if the Act applies to County);
- iv. to require any subcontractor or agent by whom protected health information is received from the other party to agree to the same restrictions and conditions that apply to Baldwin City with respect to such information;
- v. to provide access to non-duplicative protected health information to the individuals which are the subject of that information in accordance with the

regulations promulgated pursuant to the Act including the right of inspection and copying (determined as if the Act applies to County and/or Baldwin City);

vi. to give the County access to data pertaining to protected health information for the purpose of auditing compliance with Baldwin City's obligations under this Agreement or the Act;

vii. to make available its respective internal practices, books and records relating to the use and disclosure of protected health information to the United States Department of Health and Human Services and its duly authorized representatives (determined as if the Act applies to County and/or Baldwin City).

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This Agreement contains the entire agreement of the parties hereto and all prior agreements, negotiations and discussions are merged herein. This Agreement may not be modified except by a written modification signed by both parties hereto. Any determination by a Court that one term or provision of this Agreement is invalid or unenforceable shall not void or invalidate the entire agreement. The laws and administrative rules and regulations of the State of Kansas shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement.

22. CASH BASIS LAW

The parties to this Agreement acknowledge that this Agreement is subject to the Cash Basis Law, K.S.A. 10-1101 *et seq.*, and that the obligation of Baldwin City to compensate the County shall be subject to and in accordance with the Cash Basis Law.

[remainder of page intentionally blank, signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

COUNTY:

Board of County Commissioners of Douglas County,
Kansas

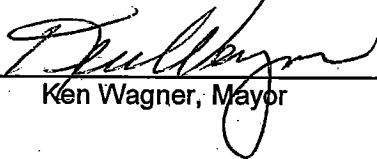
ATTEST:

By: _____
Nancy Thellman, Chair

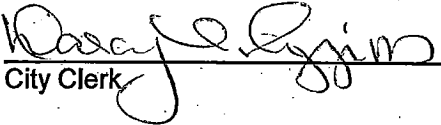
County Clerk

CITY:

CITY OF BALDWIN CITY, KANSAS

By: 
Ken Wagner, Mayor

ATTEST:


City Clerk

1(d)

AD - Crabtree, Robin

From: AD - Weinaug, Craig
Sent: Tuesday, December 22, 2009 4:49 PM
To: Nancy Thellman; James Flory; Mike Gaughan
Cc: AD - Crabtree, Robin
Subject: FW: 1120 RI

Commissioners:

I will place the below stated request on the January 6th consent agenda. Agreeing to this request does not place any costs on Douglas County, and helps the Lawrence Preservation Alliance (LPA) and Tenants to Homeowners (TTH) complete the project of providing affordable housing on the County's vacant lots located in the 1100 block of Rhode Island. This is all pursuant to an agreement that TTH reached with the previous County Commission.

Craig Weinaug

-----Original Message-----

From: Rebecca Buford [mailto:rbufordfird@yahoo.com]
Sent: Tuesday, December 22, 2009 12:21 PM
To: AD - Weinaug, Craig
Subject: 1120 RI

Dear Craig,

1120 RI is in the final stages of completion and the Lawrence Preservation Alliance is working on the final paperwork to receive the state historic tax credits for this project. Since the county is the owner of record of this property and TTH, Inc. is the ground lessee, according to state statute, the state can only release the credits to the county. We are asking, in the spirit of the original agreement, that the county agree to sign the application forms prepared by the LPA and TTH and then transfer the tax credits to the Lawrence Preservation Alliance, once received. We appreciate your cooperation in this effort and look forward to getting this project finished and sold so that the county will have a new neighbor. Thank you for all your help in this matter.

Sincerely,
Rebecca Buford
Executive Director, TTH, Inc.
Rebecca Buford
Executive Director
Tenants to Homeowners, Inc.
The Lawrence Community Housing Trust
Creating Permanently Affordable Housing in Lawrence!
785-760-2058



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 : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : December 29, 2009

Re : Consent Agenda authorization to purchase precast concrete culvert
Structure No. 20.10N-01.00E

The referenced culvert is located on E 100 Road approximately 0.1 mile north of N 2000 Road. The existing culvert is an 8'-span concrete structure with a roadway width of 16 feet. The existing culvert has structural concerns including significant voids in the north abutment wall. The culvert has no wingwalls, so erosion of road fill has been an issue. Both abutment walls are also undermining.

The proposed replacement culvert is a 12' span precast reinforced concrete frame (3-sided structure) with a roadway width of 24 feet. In the CIP, \$40,000 is allocated for Bridge No. 20.10-01.00. This funding is to purchase a precast concrete culvert for installation by department forces.

The actual cost of the concrete structure is \$34,934.24 from Oldcastle Precast of Topeka. Oldcastle is the lone supplier of 3-sided concrete structures in this vicinity.

In accordance with the Purchasing Policy, I request authorization to purchase said culvert from Oldcastle Precast.

Action Required: Consent Agenda authorization for Public Works Director to purchase a 12-foot span reinforced concrete frame structure from Oldcastle Precast in the amount of \$34,934.24 for replacement of Structure No. 20.10-01.00.

Memorandum

City of Lawrence

City Manager's Office

TO: Craig Weinaug, County Administrator
CC: David Corliss, City Manager
Roger Zalneraitis, Economic Development Coordinator/Planner
FROM: Diane Stoddard, Assistant City Manager
DATE: December 31, 2009
RE: West Lawrence Labs Lease to Lawrence-Douglas County Bioscience Authority (LDCBA)

History:

On November 10, 2009, Staff presented to the City Commission a request from the Lawrence- Douglas County Bioscience Authority (LDCBA) for the City to purchase the West Lawrence Labs building and provide enhancements to the HVAC operating systems within the building. This purchase would allow Critech to remain in Lawrence, and for the additional space to be subdivided and leased to multiple tenants. The facility is seen as a potential graduation facility for businesses that come out of the West Campus Bioscience and Technology Business Center.

Under the proposed transaction, the City would issue bonds to finance the purchase of the facility and the improvements. LDCBA would pay to the City and County an initial payment of \$25,000 per year for five years, followed by the principal owed on the bond and interest up to four percent per year. The City and County would pay the balance of the interest owed.

The City Commission received Staff's report on the request and took public comment on the issue. The Commission voted unanimously to authorize staff to initiate the procedure for considering the transaction. The presentation was then made to the County Commission on November 11, 2009. It also unanimously supported the proposal to proceed with the initial steps for the transaction.

The City initiated the formal approval process for the interest subsidy by presenting the proposal to PIRC on November 16, 2009. PIRC voted 7-1 to recommend that the City proceed with the LDCBA proposal for the acquisition of West Lawrence Labs. The one vote in opposition was based on a desire to see an appraisal completed before the sale.

On December 8, the City Commission considered and unanimously approved the City-County Cooperation agreement, first reading of the bond ordinance authorizing the sale of the bonds to complete the transaction, and authorized the City Manager to execute a real estate purchase agreement on behalf of the City. On December 15, the City Commission authorized second reading of the bond ordinance. On December 16, the County Commission approved the City-County Cooperation Agreement and the real estate purchase agreement and authorized the Chair to execute the final agreements upon final legal review.

Lease Agreement with LDCBA:

The final step in the transaction, outside of issuing the bonds and closing the real estate transaction, is the approval of a lease between the City/County and the LDCBA. The LDCBA will serve as the overall manager of the building and is responsible for leasing the building to generate revenue to retire the bonds and perform the necessary maintenance on the building.

A draft of the lease is attached. There may be some final legal edits, but the lease is expected to remain in substantially the same form. The lease will need to be executed by all three parties.

The major terms of the lease are as follows:

- **Lease Term:** LDCBA will have a lease through September 1, 2034. The lease may be terminated earlier in the event of default by LDCBA, or with five year's notice to LDCBA by the City/County.
- **LDCBA Reporting:** LDCBA will provide to the City and County an annual operating budget indicated projected revenues and expenses related to the building. LDCBA will also provide two annual reports showing all actual revenues and expenditures.
- **City Reporting:** The City will track payments from LDCBA and the County related to the retirement of the debt and the payment of interest associated with the debt issuance.
- **Option to Purchase Facility:** LDCBA will have an option to purchase the facility by paying the following to the City/County: the full amount of outstanding bonds, any outstanding expenditures incurred by the City and County and any fees and expenses related to the bonds or the building.
- **Management Committee:** A Management Committee is established to consist of the City Manager and the County Administrator to review and approve various matters related to the execution of the lease with LDCBA. These items include the annual operating budget and subleases on the building. An authorized representative of LDCBA also is considered a non-voting ex-officio member of the Management Committee.
- **Bond Proceeds for Initial Leasehold Improvements:** Approximately \$600,000 will be available to LDCBA through the bond proceeds. These funds are to be spent on leasehold improvements based upon a plan which will be submitted to the Management Committee. As previously indicated to the City and County Commissions, the bulk of these funds will be utilized to make HVAC improvements to the building, which will aid in marketing the space and improving energy efficiency.
- **Rent:** LDCBA pledges its revenues from subleases to provide principal and interest payments to the City and to pay expenses related to the operation and maintenance of the building, including taxes.
- **Maintenance, Taxes and Utilities:** LDCBA is responsible for maintenance, payment of property taxes, and utilities for the building.
- **Insurance:** The City will provide insurance for the property with the premium being remitted by LDCBA. LDCBA will be required to maintain appropriate liability insurance, as will the subtenants.

- **Hazardous Materials:** LDCBA will ensure that it and its subtenants follow appropriate environmental laws and handling of materials within the building.
- **Subleases:** All subleases must be approved by the Management Committee and subtenants will be required to abide by certain standard lease provisions which ensure protection for the City and County related to the operation of the building.

Requested Action

Authorize the Chair to execute the lease between Lawrence-Douglas County Bioscience Authority and Douglas County for the West Lawrence Labs building, upon final legal review.

**CITY OF LAWRENCE, KANSAS,
and
DOUGLAS COUNTY, KANSAS,
As Lessors**

AND

**LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY,
As Lessee**

LEASE AGREEMENT

Dated as of January 1, 2010

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of January 1, 2010 (the "Lease"), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and **DOUGLAS COUNTY, KANSAS**, a body corporate and politic organized and existing under the laws of the State of Kansas (the "County"), as lessors, and **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a Kansas not for profit corporation ("LDCBA"), as lessee;

WITNESSETH:

WHEREAS, the City is authorized pursuant to Ordinance No. 8480 (the "Ordinance") and Article 12, Section 5 of the Constitution of the State of Kansas (the "Home Rule Amendment"), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes, and to issue general obligation bonds for the purpose of paying the cost of such facilities;

WHEREAS, the County is authorized pursuant to Resolution No. HR-09-12-4 (the "Resolution") and K.S.A. 19-101 (K.S.A. 19-101, the Ordinance, the Resolution and the Home Rule Amendment collectively referred to here in as the "Act") to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes; and

WHEREAS, pursuant to the foregoing, the City and the County desire to acquire and lease the Leased Premises to the LDCBA and the LDCBA desires to lease the Leased Premises from the City and the County, for the rentals and upon the terms and conditions hereinafter set forth; and

WHEREAS, pursuant to this Lease, and so long as there is no default hereunder, the parties desire that the LDCBA manage the day-to-day operations of the Leased Premises so as to encourage economic development of bioscience and technology components of the local economy.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City, the County and the LDCBA do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease, the following words and terms as used in this Lease shall have the following meanings:

"Additional Rent" means the additional rental described in **Sections 4.1, 5.2 and 6.2** of this Lease.

"Annual Interest Rate" means the lesser of (a) an interest rate equal to the City's average annual investment rate for the City's idle funds for the previous calendar year plus 50 basis points, or (b) 4.00%.

"Authorized City Representative" means the City Manager or his or her designee.

“Authorized County Representative” means the County Administrator or his or her designee.

“Authorized LDCBA Representative” means the President of the LDCBA or his or her designee.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Bonds” means the City’s Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Project), Series 2010-A in the estimated principal amount of \$2,900,000.

“Cooperation Agreement” means that certain Cooperation Agreement between the City and the County dated as of January 1, 2010.

“Event of Default” means any Event of Default as described in **Section 12.1** of this Lease.

“Expenses” means all expenses of any kind incurred with respect to the Leased Premises and paid by LDCBA, the City or the County.

“Full Insurable Value” means the full replacement cost of the Leased Premises, as determined by the City and the County.

“Lease” means this Lease Agreement, between the City and the County, as lessors, and the LDCBA, as lessee, as from time to time amended and supplemented in accordance with the provisions of this Lease.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

“Leased Premises” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof, including all buildings, structures, improvements, fixtures, machinery and equipment related thereto.

“Leasehold Improvements” means certain upgrades to the HVAC system on the Leased Premises and other improvements as proposed by LDCBA to the Management Committee in accordance with **Section 4.1** hereof.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Leased Premises, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the County) incurred in the collection of such gross proceeds.

“Net Revenues” means, for the period of determination, all Revenues less all Expenses.

“Rent” means Basic Rent and Additional Rent.

“Revenues” means all revenues of any kind generated by the Leased Premises and paid to LDCBA.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.

(c) 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.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

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

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City hereby represents and warrants that the City is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.2. Representations by the County. The County hereby represents and warrants that the County is a body corporate and politic duly organized and validly existing under the laws of the State of Kansas. The County has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the County has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.3. Representations by the LDCBA. The LDCBA makes the following representations as the basis for the undertakings on its part herein contained:

(a) The LDCBA is a 501(c)(6) not for profit corporation validly existing and in good standing under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) The LDCBA has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper corporate action of its Board of Directors, the LDCBA

has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the LDCBA will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other corporate restrictions or any agreement or instrument to which the LDCBA is a party or by which it or any of its property is bound, or the LDCBA's Articles of Incorporation or Bylaws or any order, rule or regulation applicable to the LDCBA or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the LDCBA under the terms of any instrument or agreement to which the LDCBA is a party.

(d) The Leased Premises will comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of its knowledge, without independent investigation, the Leased Premises will comply with all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City and the County hereby rent, lease and let the Leased Premises to the LDCBA, and the LDCBA hereby rents, leases and hires the Leased Premises from the City and the County, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term.

(a) This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date the City and the County take title to the Leased Premises, which date is expected to be on or about January 26, 2010, and terminating on September 1, 2034.

(b) The City and the County may terminate this Lease upon no less than five years' written notice to LDCBA.

Section 3.3. Possession and Use of the Leased Premises.

(a) The City and the County covenant and agree that as long as neither the City nor the County has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the LDCBA shall have sole and exclusive possession of the Leased Premises (subject to the City's and the County's right of access and inspection pursuant to this Lease) and shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Lease Term. The City and the County covenant and agree that they will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the LDCBA from having quiet and peaceable possession and enjoyment of the Leased Premises during the Lease Term and will, at the request and expense of the LDCBA, cooperate with

the LDCBA in order that the LDCBA may have quiet and peaceable possession and enjoyment of the Leased Premises.

(b) Subject to the provisions of this Section, the LDCBA shall have the right to use the Leased Premises for a bioscience and technology incubator and/or graduation facility, and/or for any other purpose that is consistent with the economic development mission of the LDCBA.

(c) The LDCBA shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways. The LDCBA shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The LDCBA shall 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 LDCBA to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the LDCBA shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the LDCBA may refrain from complying therewith; provided, however that (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment related to such contest and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

(d) Neither the City nor the County shall be liable for any loss or damage to the property of LDCBA or any sublessor or any other personal property in or about the premises, regardless of the cause of such loss or damage.

Section 3.4. Funds and Accounts; Use of Revenues and Payment of Expenses.

(a) ***Establishment of Operating Fund; Annual Budget.*** Upon commencement of this Lease, the LDCBA shall create an Operating Fund with respect to the Leased Premises, which shall be separately accounted for and budgeted each year by the LDCBA. Annually, by each June 1, the LDCBA shall submit a budget to the Management Committee created pursuant to the Cooperation Agreement showing all expected Revenues and Expenses of the Leased Premises for the following calendar year.

(b) ***Revenues of Leased Premises; Deposit to Operating Fund.*** All Revenues generated by LDCBA from LDCBA's possession and use of the Leased Premises shall be deposited to the Operating Fund and shall be held by the LDCBA in escrow for the benefit of the LDCBA, the City and the County.

(c) ***Expenses of Leased Premises; Payment from Operating Fund.*** All moneys in the Operating Fund shall be used by the LDCBA solely and only to pay management, operation and maintenance expenses and Rent required to be paid by the LDCBA pursuant to this Lease. Any Expenses in excess of the total amount of aggregate Expenses shown in the then current budget, as approved by the Management Committee, shall require the approval of the Management Committee before such Expenses are paid from the Operating Fund. If LDCBA fails to pay any Rent when due pursuant to this agreement, the amount of any unpaid Rent shall accrue as a deficit in the Operating Fund. For purposes of approval of any budget under this **Section 3.4(c)**, the Authorized LDCBA Representative shall be considered an *ex*

officio member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the budget, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such budget.

Section 3.5. Accounting; Reports. On each February 1 and August 1, LDCBA shall transmit to the City and the County a report showing an accounting of all Revenues and Expenses deposited to and paid from the Operating Fund. Such semi-annual report shall also describe maintenance performed on the Leased Premises during the prior six-month period, and an estimate of maintenance to be performed on the Leased Premises, including the estimated costs thereof, during the twelve months following such report.

Section 3.6. Option to Purchase the Leased Premises. LDCBA shall have, and is hereby granted, the option to purchase the Leased Premises at any time, prior to the expiration of the Lease Term, and so long as the LDCBA is not in default under this Lease and/or the City and the County have not entered into a contract for sale of the Leased Premises to a third party, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to the Ordinance and Resolution of the City authorizing the issuance of such Bonds. To exercise such option the LDCBA shall give written notice to the City and to the County, and shall specify therein the date of closing such purchase, which date shall be not less than 30 nor more than 180 days from the date such notice is mailed. The purchase price payable by the LDCBA in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the "Expenses" (as that term is defined in the Cooperation Agreement) paid by the City and the County and shown on the ledger kept by the City pursuant to the Cooperation Agreement; plus
- (c) an amount of money equal to reasonable fees and expenses of the City and the County accrued and to accrue with respect to the Bonds and the Leased Premises until such redemption of the Bonds.

Section 3.7. Conveyance of the Leased Premises. At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the LDCBA documents conveying to the LDCBA legal title to the Leased Premises, as it then exists, subject to the following: (1) those liens and encumbrances, if any, to which title to the Leased Premises was subject when conveyed to the City and the County; (2) those liens and encumbrances created by the LDCBA or to the creation or suffering of which the LDCBA consented; and (3) those liens and encumbrances resulting from the failure of the LDCBA to perform or observe any of the agreement on its part contained in this Lease.

ARTICLE IV

INITIAL IMPROVEMENTS

Section 4.1. Initial Improvements to Leased Premises. As soon as practical after execution of this Lease, the LDCBA shall submit a plan for the Leasehold Improvements to the Management Committee for approval. Following approval, the LDCBA shall cause the Leasehold Improvements to be

completed. LDCBA may submit up to \$600,000.00 of the costs of such Leasehold Improvement to the Management Committee for payment and/or reimbursement, and any costs in excess thereof shall be paid by LDCBA.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent.

(a) The LDCBA covenants and agrees to pay as Basic Rent to the City and the County on each February 1 and August 1 (each, a "Rent Payment Date") the Principal Portion of Basic Rent as shown on **Schedule I** hereto plus the Interest Portion of Basic Rent. The Interest Portion of Basic Rent on each Rent Payment Date shall be determined by (a) multiplying the Cumulative Outstanding Principal Amount as shown on **Schedule I** hereto on each Rent Payment Date by the Annual Interest Rate, as determined from time to time, and (b) dividing such amount by two. The City shall give notice of the Annual Interest Rate to LDCBA and the County by January 15 of each year.

(b) All payments of Basic Rent provided for in this Section shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.2. Additional Rent.

(a) The LDCBA shall pay as Additional Rent the following amounts:

(1) all expenses reasonably incurred in connection with the enforcement of any rights against the LDCBA or the Leased Premises under this Lease by the City or the County, except for such expenses as may be incurred solely as a result of the gross negligence or wrongful misconduct of the City, the County or both;

(2) an amount sufficient to reimburse the City for all expenses reasonably incurred by the City hereunder and in connection with the performance of its obligations under this Lease;

(3) an amount sufficient to reimburse the County for all expenses reasonably incurred by the County hereunder and in connection with the performance of its obligations under this Lease;

(4) all general ad valorem and personal property taxes, including any special assessments levied against the Leased Premises and/or any payments in lieu of taxes;

(5) all other payments of whatever nature which the LDCBA has agreed to pay or assume under the provisions of this Lease.

(b) Except as otherwise provided in this Section, Additional Rent shall be payable within 10 days of notice thereof from the City or the County, or by such later date specified in notice provided by the City or the County to LDCBA. All payments of Additional Rent provided for in this Section shall be paid directly to the person or entity owed, except that any payments to be made to the City or the County shall be

paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.3. Obligations of LDCBA Absolute and Unconditional.

(a) The obligations of the LDCBA under this Lease are intended to be absolutely net to the City and the County, and the obligations of the LDCBA under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and notwithstanding any damage to, loss, theft or destruction of, the Leased Premises or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Leased Premises, legal curtailment of the LDCBA's use thereof, the eviction or constructive eviction of the LDCBA, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the City's or the County's legal organization or status, or any default of the City or the County hereunder, and regardless of the invalidity of any action of the City or the County, and regardless of the invalidity of any portion of this Lease.

(b) Nothing in this Lease shall be construed to release the City or the County from the performance of any agreement on its part herein contained or as a waiver by the LDCBA of any rights or claims the LDCBA may have against the City or the County under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City or the County separately, it being the intent of this Lease that the LDCBA shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent). The LDCBA may, however, at its own cost and expense and in its own name or in the name of the City or the County, prosecute or defend any action or proceeding or take any other action involving third persons which the LDCBA deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City and the County hereby agree to cooperate fully with the LDCBA and to take all action necessary to effect the substitution of the LDCBA for the City and the County in any such action or proceeding if the LDCBA shall so request.

ARTICLE VI

MANAGEMENT, MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Management of the Leased Premises. The LDCBA may, at any time during the Lease Term, employ an individual or firm to manage the Leased Premises. Such individual or firm shall have experience managing facilities such as the Leased Premises, and shall be subject to review and approval by the City and the County.

Section 6.2. Maintenance and Repairs. Throughout the Lease Term the LDCBA shall, at its own expense, keep the Leased Premises in as reasonably safe condition as the operation thereof will permit, and keep the Leased Premises in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. LDCBA shall not commit waste of the Leased Premises.

Section 6.3. Taxes, Assessments and Other Governmental Charges.

(a) The LDCBA shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against the Leased Premises, or any part thereof or interest therein (including the leasehold estate of the LDCBA therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the LDCBA, or the income therefrom or Basic Rent and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would materially encumber the City's or the County's title to the Leased Premises; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the LDCBA shall be obligated to pay only such installments thereof as become due and payable during the Lease Term; except, provided that the first and last installments thereof shall be prorated according to the Lease Term.

(b) The LDCBA shall have the right, in its own name or in the City's and the County's name, to contest the validity or amount of any tax, assessment or other governmental charge which the LDCBA is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City and the County agree to cooperate fully with the LDCBA in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

Section 6.4. Utilities. All utilities and utility services used by the LDCBA in, on or about the Leased Premises shall be paid for by the LDCBA and shall be contracted for by the LDCBA in the LDCBA's own name, and the LDCBA shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.5. Ad Valorem Taxes. The City, the County and the LDCBA acknowledge that the Leased Premises shall pay general ad valorem and property taxes (including special assessments levied on account of special benefits) on real and personal property. The City, the County and LDCBA covenant that they will not voluntarily take any action which may be reasonably construed as tending to abate the levy or assessment of such ad valorem or property taxes on the Leased Premises during the Lease Term.

ARTICLE VII

INSURANCE

Section 7.1. Property Insurance. The City will obtain and shall maintain throughout the Lease Term, property insurance insuring the Leased Premises (excluding foundations), and business income

(including extra expense) insurance for a period of not less than 12 months, against loss or damage resulting from perils covered by the causes of loss – special form (or the equivalent ISO form in use from time to time in Kansas). The property insurance shall be written on a replacement cost basis for the Full Insurable Value, with an agreed amount endorsement to prevent coinsurance and with deductibles not to exceed \$100,000. The insurance required pursuant to this Section shall be maintained at the LDCBA's sole cost and expense, shall be maintained with generally recognized responsible insurance company or companies rated A(X) or better in the most current issue of Best's Insurance Reports and authorized to do business in the State of Kansas as may be selected by the City and the County. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City, the County and the LDCBA as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA, and shall be payable to the City and the County. In the event of loss or damage to the Leased Premises, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid over and applied as provided in **Article IX** of this Lease.

Section 7.2. Public Liability Insurance.

(a) LDCBA shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance, or the equivalent ISO form in use from time to time in Kansas, naming the City and the County, their respective employees, and the managing agent for the Leased Premises, each as additional insured parties, insuring against claims for bodily injury, personal injury and property damage arising out of or in any way related to the use and occupancy of the Leased Premises by LDCBA or its agents, contractors, employees, servants, subtenants, licensees or concessionaires (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), with a combined single limit of not less than \$1,000,000 per occurrence with a \$3,000,000 aggregate for this location and a deductible not to exceed \$100,000. The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA. Such policies or copies or certificates thereof shall be furnished to the City and County. LDCBA's insurance shall provide primary coverage to the City and the County when any policy issued to the City and the County provides duplicate or similar coverage, and in such circumstance the policies of the City and the County will be excess over LDCBA's policy. If LDCBA has other locations that it owns or leases that are covered by such insurance, such policies shall include an aggregate limit per location endorsement, and such limit for the Leased Premises shall not be less than that specified above, so that losses at other properties cannot decrease the amount of insurance available for the Leased Premises below the limits specified above. In no event shall the limits of such insurance be considered as limiting the liability of LDCBA under this Lease.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.3. Blanket Insurance Policies. The LDCBA may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

ARTICLE VIII

ALTERATION OF THE LEASED PREMISES

Section 8.1. Additions, Modifications and Improvements of the Leased Premises. Except as provided in **Section 4.1** hereof, the LDCBA shall have and is hereby given the right to make such additions, modifications and improvements in and to any part of the Leased Premises as the LDCBA from time to time may deem necessary or desirable for its business purposes, except, provided that any structural changes to the Leased Premises, any changes that affect the building systems (including, but not limited to, electrical, HVAC, or plumbing), or changes with a total cost in excess of \$200,000.00 shall be subject to review and prior approval of the Management Committee. All such additions, modifications and improvements shall be made at LDCBA's sole cost and expense. All additions, modifications and improvements made by the LDCBA pursuant to the authority of this Section shall (a) be made in workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Leased Premises.

Section 8.2. Permits and Authorizations. The LDCBA shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, restoration, replacement, modification or addition to the Leased Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.3. Mechanics' Liens.

(a) The LDCBA shall not do or suffer anything to be done whereby the Leased Premises, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Leased Premises, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Leased Premises, the LDCBA shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City and the County shall not be liable for any labor or materials furnished the LDCBA or anyone claiming by, through or under the LDCBA upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City or the County in and to the Leased Premises or any part thereof.

(b) Notwithstanding paragraph (a) above, the LDCBA shall have the right to contest any such mechanics' or other similar lien if within said 90-day period stated above it notifies the City and the County in writing of its intention so to do and posts bond sufficient to cover such lien, and provided the LDCBA diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Leased Premises, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any loss, costs or expenses the City or the County may incur related to any such contest. The City and the County shall cooperate fully with the LDCBA in any such contest.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.1. Damage or Destruction.

(a) If the Leased Premises shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the LDCBA, as promptly as practicable, shall either repair, restore, replace or rebuild the same to as nearly as may be practicable their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding such Leased Premises shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The City and the County shall have the right to review and approve the plans and specifications related to such improvement of the Leased Premises.

The Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Leased Premises shall be paid to the Building Fund and shall be applied in the following manner:

(A) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of making such temporary repairs or doing such other work, as, in the LDCBA's reasonable opinion, may be necessary in order to protect the Leased Premises pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(B) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of repairing, restoring, replacing or rebuilding the Leased Premises or any part thereof;

(C) payment to the LDCBA pursuant to subdivisions (A) or (B) of this subsection (a)(ii) from such Net Proceeds shall be made to the LDCBA from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the architects' and engineers' fees, and other charges in connection with such work, upon delivery to the City and the County of a certificate of the LDCBA's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the LDCBA are payable to the LDCBA in accordance with the provisions of this Article and that such amounts are then due and payable by the LDCBA or have theretofore been paid by the LDCBA; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications approved by the City and the County therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; (5) the estimated cost of completing the work, in reasonable detail; and (6) that the remaining Net Proceeds are sufficient to pay the estimated cost of completing the work;

(D) at the request of the City or the County, the LDCBA shall furnish to the person requesting the same, at the time of any such payment, with an official search, or other evidence reasonably satisfactory to such person, that there has not been filed with respect to the Leased Premises any mechanic's or other lien which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. The City shall not pay out any such sum when the Leased Premises shall be encumbered with any such security interest or encumbrance.

(b) The insurance monies, if any, paid to the LDCBA as provided under this Article, on account of any loss or destruction to the Leased Premises, shall be held by it in trust and applied only for the purposes of repairing, reconstructing or restoring the Leased Premises or constructing new buildings and improvements and installing new machinery, equipment and fixtures thereto.

(c) If any of the insurance monies paid by the insurance company to the City or the LDCBA as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be used by the City and the County for any purpose permitted by law. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the LDCBA shall pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the LDCBA shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the LDCBA, as though no damage by fire or any other casualty has occurred.

(e) The City, the County and the LDCBA agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The LDCBA agrees to give prompt notice to the City and the County with respect to all fires and any other casualties occurring in, on, at or about the Leased Premises.

(g) If the LDCBA shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the LDCBA may elect to terminate this Lease. In the event LDCBA elects to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due and owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The LDCBA agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) If the City and the County shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the City and the County may elect to terminate this Lease. In the event the City and the County elect to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due and owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The City and the County agree to be reasonable in exercising its judgment pursuant to this subsection (g).

(i) The LDCBA shall not, by reason of its inability to use all or any part of the Leased Premises during any period in which the Leased Premises is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or the County or to any abatement or

diminution of the rentals payable by the LDCBA under this Lease or of any other obligations of the LDCBA under this Lease except as expressly provided in this Section.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the Lessors; Exculpation and Indemnification.

(a) The City and the County make no warranty, either express or implied, as to the condition of the Leased Premises or that it will be suitable for the LDCBA's purposes or needs. The LDCBA releases the City and the County from, agrees that the City and the County shall not be liable for and agrees to hold the City and the County harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Leased Premises or the use thereof; unless such loss is the result of the City's or the County's gross negligence or willful misconduct.

(b) The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that LDCBA has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. LDCBA further acknowledges and agrees that except as may otherwise be specifically provided herein, LDCBA accepts the Leased Premises in "as-is" condition and agrees that neither the City nor the County make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If necessary, LDCBA shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

Section 10.2. Surrender of Possession. Upon accrual of the City's or the County's right of re-entry because of the LDCBA's default hereunder or upon the cancellation or termination of this Lease for any reason, the LDCBA shall peacefully surrender possession of the Leased Premises to the City and the County in good condition and repair, ordinary wear and tear excepted; provided, however, the LDCBA shall have the right within 90 days prior to the termination of this Lease to remove from the Leased Premises any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and not constituting part of the Leased Premises. All repairs to and restorations of the Leased Premises required to be made because of such removal shall be made by and at the sole cost and expense of the LDCBA, and during said 30-day (or extended) period the LDCBA shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and which are not so removed from the Leased Premises prior to the expiration of said period shall be the separate and absolute property of the City and the County.

Section 10.3. Lessors' Right of Access to the Leased Premises. The LDCBA agrees that the City and the County and their duly authorized agents shall have the right to enter upon the Leased Premises

Site after giving notice to the LDCBA and with appropriate advance notice so as to allow LDCBA to comply with any confidentiality agreements contained in any subleases, all (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, equipping or remodeling provided for in **Section 4.1** hereof, (b) to perform such work in and about the Leased Premises made necessary by reason of the LDCBA's default under any of the provisions of this Lease, and (c) following an Event of Default, to exhibit the Leased Premises to prospective purchasers, lessees or trustees.

Section 10.4. Indemnification of City and County. The LDCBA shall indemnify and save the City and the County harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Leased Premises during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Leased Premises caused by the LDCBA or its sublessees, (b) any breach or default on the part of the LDCBA in the performance of any of its obligations under this Lease, (c) any contract entered into in by the LDCBA or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Leased Premises, (d) any act of negligence of the LDCBA or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the LDCBA, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the LDCBA; provided, however, the indemnification contained in this **Section 10.4** shall not extend to the City or the County if (i) such claim is the result of work being performed at the Leased Premises by employees of the City or the County, or (ii) such claim is the result of the City's or the County's gross negligence or willful misconduct. The LDCBA shall indemnify and save the City and the County harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of the City or the County) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (e), and upon notice from the City or the County, the LDCBA shall defend them or either of them in any such action or proceeding.

Section 10.5. LDCBA to Maintain its Corporate Existence. The LDCBA agrees that throughout Lease Term, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets.

ARTICLE XI

HAZARDOUS MATERIALS

Section 11.1. Defined Terms. The following words and terms, as used in this Article, shall have the following meanings:

b. **"Claim"** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

c. **"Environmental Laws"** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality

Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

d. **"Hazardous Materials"** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

e. **"Manage" or "Management"** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

f. **"Release" or "Released"** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.

g. **"Response" or "Respond"** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

Section 11.2. LDCBA's Obligations with Respect to Environmental Matters. During the Term of this Agreement, (i) LDCBA shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) LDCBA shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by LDCBA in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, including installation of any underground storage tanks, without prior written disclosure to and prior written approval by the City and the County; (iii) LDCBA shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, LDCBA shall not dispose of Hazardous Materials in dumpsters provided by the City and the County for tenant use; (v) LDCBA shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) LDCBA shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) LDCBA shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, LDCBA shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility

express excludes compliance or causing the compliance of the Leased Premises with Environmental Laws which are or which are allegedly violate (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

Section 11.3 Copies of Notices. During the Term of this Lease, as extended, if applicable, LDCBA shall provide the City and the County promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Department of Health and Environment, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, LDCBA shall provide the City and the County promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

Section 11.4 City and County's Right to Inspect. The City and the County and their employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to LDCBA (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with LDCBA's business in the Leased Premises, for the purpose of (i) determining LDCBA's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. The City and the County and their agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by LDCBA or its agents, employees, contractors or invitees. LDCBA agrees to cooperate with such investigations by providing any relevant information requested by the City and the County. LDCBA may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the Management Committee's prior written consent.

Section 11.5 Tests and Reports. Within ten (10) days of LDCBA's receipt of a written request by the City and the County, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event the City and the County hereby reserves the right to request the following described documents more often, LDCBA shall provide the City and the County with (i) copies of all environmental reports and tests obtained by LDCBA; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by LDCBA with respect to any Hazardous Materials; (iii) copies of any permits issued to LDCBA under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by LDCBA to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. LDCBA shall provide the City and the County with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous

Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that LDCBA complies with all Environmental Laws relating to the Leased Premises.

Section 11.6 LDCBA's Obligation to Respond. If LDCBA's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, LDCBA shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

Section 11.7 City and County's Right to Act. In the event that LDCBA shall fail to comply with any of its obligations under this Paragraphs as and when required hereunder, the City and the County shall have the right (but not the obligation) to take such action as is required to be taken by LDCBA hereunder and in such event, LDCBA shall be liable and responsible to the City and the County for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by the City and the County in connection with such matters. LDCBA shall reimburse the City and the County immediately upon demand for all such amounts for which LDCBA is liable.

Section 11.8 Indemnification. Notwithstanding anything contained in this Agreement to the contrary, LDCBA shall reimburse, defend, indemnify and hold the City and the County, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

1. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually or allegedly Managed, released or disposed of on or from the Leased Premises (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and
2. Any actual or alleged illness, disability, injury, or death of any person in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials Managed or Released on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and
3. Any actual or alleged failure of LDCBA or the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under Paragraph 11(b); and
4. Any failure by LDCBA to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of LDCBA under this Lease shall expressly exclude any obligation for the pre-existing environmental condition or Release of the Leased Premises prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against the City and the County for which the City and the County are entitled to indemnity hereunder, the City and the County shall notify LDCBA of such Claim or assertion of liability and thereupon LDCBA shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and

continue such defense at all times thereafter until completion. The obligations of LDCBA under this Paragraph shall survive any termination or expiration of this Lease.

Section 11.9 Environmental Assessment Requirement. LDCBA shall timely provide a Phase I environmental report of reasonable scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a qualified environmental consultant reasonably approved by the City and the County, as to (1) any matter, to the extent such matter is attributable to events or conditions which arise during the Term, as extended, if applicable, and (2) the general environmental condition of the Leased Premises (the "Environmental Assessment"), within 60 days prior to termination or expiration of this Lease. If the Environmental Assessment is not delivered prior to such 60th day, then the City and the County may arrange for completion of same. The reasonable cost of any Environmental Assessment completed by the City and the County or LDCBA pursuant to this provision shall be paid by LDCBA or reimbursable to the City and the County by LDCBA (if completed by the City and the County) promptly upon the City and the County furnishing LDCBA with evidence of costs incurred therefor.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for two consecutive Rent Payment Dates, upon five days written notice to the LDCBA by the City or the County or default in the due and punctual payment Additional Rent for a period of 30 days following written notice to the LDCBA by the City or the County; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the LDCBA's part to be observed or performed, and such default shall continue for 30 days after the City or the County has given the LDCBA written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the LDCBA has commenced such cure within said 30-day period, and (2) the LDCBA diligently prosecutes such cure to completion); or

(c) The LDCBA shall: (1) admit in writing its inability to pay its debts as they become due; or (2) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the LDCBA's consent or acquiescence, vacated or set aside; or (5) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator 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, as now or in the future amended, which order or proceeding, if not consented to by it, shall not be dismissed, vacated,

denied, set aside or stayed within 60 days after the day of entry or commencement; or (7) 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; or

(d) The LDCBA shall vacate or abandon the Leased Premises, and the same shall remain uncured for and unoccupied for a period of 60 days.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof shall have occurred and be continuing, then the City or the County may at the City's or County's election, then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

(a) cause all Basic Rent payable for the remainder of the term of this Lease to become due and payable;

(b) give the LDCBA 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 LDCBA's rights to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, and the City and the County may re-enter and take possession of the Leased Premises; or

(c) without terminating this Lease, re-enter the Leased Premises to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County shall use reasonable diligence to relet the Leased Premises, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City and the County may deem advisable, with the right to make alterations and repairs to the Leased Premises, and no such re-entry or taking of possession of the Leased Premises by the City or the County shall be construed as an election on the City's or the County's part to terminate this Lease, and no such re-entry or taking of possession by the City or the County shall relieve the LDCBA of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the LDCBA shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Leased Premises shall have been relet, less the Net Proceeds, if any, of any reletting of the Leased Premises after deducting all of the City's and County's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County may, by notice to the LDCBA given at any time thereafter following an Event of Default, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier than 30 days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the City and the County shall have the right to elect to re-enter and take possession of the Leased Premises, the City and the County may enter and expel the LDCBA and those claiming through or under the LDCBA and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City and the County may take whatever action at law or

in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the LDCBA under this Lease.

Section 12.3. Survival of Obligations. The LDCBA covenants and agrees with the City and County that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the LDCBA shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, the LDCBA's obligation under this Lease shall thereupon cease and terminate in full.

Section 12.4. Performance of the LDCBA's Obligations by the City and the County. If the LDCBA shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City or the County, may (but shall not be obligated so to do) upon the continuance of such failure on the LDCBA's part for 30 days after written notice of such failure is given the LDCBA by the City or the County, and without waiving or releasing the LDCBA from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the County and all necessary incidental reasonable costs and expenses incurred by the City or the County in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the County on demand, and if not so paid by the LDCBA, the City or the County shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the LDCBA in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City, the County and the LDCBA hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City, the County and the LDCBA shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the LDCBA of any covenant, agreement or undertaking by the LDCBA, the City and the County may nevertheless accept from the LDCBA any payment or payments hereunder without in any way waiving City's or the County's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the LDCBA which were in existence at the time such payment or payments were accepted by the City or the County.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The LDCBA shall not have the right to assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof, except that LDCBA shall have the right to enter into subleases with such subtenants and on such terms as set forth in a written consent of the Authorized City Representative

and the Authorized County Representative. Such approval shall be handled by the Management Committee as expediently as possible under the circumstances. For purposes of approval of any sublease under this **Section 13.1**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the sublease, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such sublease. If the Management Committee and the Authorized LDCBA Representative cannot reach a successful resolution of issues related to such sublease, the approval of such sublease shall be presented to the governing bodies of the City and the County, respectively. No sublease of the Leased Premises shall release or discharge the LDCBA from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The LDCBA shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the County a true and correct copy of each such sublease.

(b) All subleases presented to and approved by the Management Committee shall include the provisions regarding insurance, damage or destruction of the subleased premises, hazardous materials, the Americans with Disabilities Act, indemnification and acknowledgement of this Lease in substantially the form attached hereto as **Exhibit A**. In no event shall the term of any sublease be in excess of five years.

Section 13.2. Assignment of Sublease Revenues by LDCBA. The LDCBA shall assign and pledge any rents, revenues and receipts receivable under any sublease, to the City and the County as security for payments due under this Lease.

Section 13.3. Assignment of Revenues by County. The County shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the City pursuant to the Cooperation Agreement as security for payments due under the Cooperation Agreement and the LDCBA hereby consents to such pledge and assignment.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of all parties hereto.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

- (a) To the City: City of Lawrence, Kansas
City Hall
6 East 6th Street
Lawrence, Kansas 66044
Attention: City Clerk
- (b) To the County: Douglas County, Kansas
Douglas County Courthouse
1100 Massachusetts Street
Lawrence, Kansas 66044
Attention: County Administrator
- (c) To the LDCBA: Lawrence-Douglas County Bioscience Authority
1617 St. Andrews Drive
Lawrence, Kansas 66047
Attention: President

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by any party hereto shall also be given to all other parties. The City, the County and the LDCBA 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 15.2. Lessors Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City and the County shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City and the County shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules.

Section 15.3. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease, or any obligation herein or therein imposed upon the City or the County, or the breach thereof, shall constitute or give rise to or impose upon the City or the County a pecuniary liability or a charge upon the general credit or taxing powers of the City, the County or the State of Kansas. Such limitation shall not apply to any liability or charge directly resulting from the City's or the County's breach of any provision, covenant or agreement contained herein.

Section 15.4. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Kansas.

Section 15.5. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City, the County and the LDCBA and their respective permitted successors and assigns.

Section 15.6. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. City and County Sale of the Leased Premises. The City or County may, at any time, contract to sell their respective interests in the Leased Premises. From and after such a sale, the City and County shall be released from all liability to LDCBA and its successors and assigns arising from this Lease because of any act, occurrence or omission of the City or County occurring after such sale, and LDCBA shall look solely to the City's or County's successor in connection with the same; provided however, that the City and County shall not be released from liability to LCDBA and its successors and assigns under this Lease because of any act, occurrence or omission of occurring prior to such sale, unless such liability is expressly assumed by the City's or County's successor-in-interest in and to the Leased Premises.

Section 15.10. Limitation of City and County Liability. Notwithstanding anything in this Lease to the contrary, the City's and County's liability under this Lease shall be limited to their respective interests in the Leased Premises.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF LAWRENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor of the **CITY OF LAWRENCE, KANSAS**, a municipal corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

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

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

DOUGLAS COUNTY, KANSAS

By: _____
Chair of Board of County Commissioners

[SEAL]

ATTEST:

County Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared **Nancy Thellman**, to me personally known, who, being by me duly sworn, did say that (s)he is the Chair of the Board of County Commissioners of **DOUGLAS COUNTY, KANSAS**, a body corporate and politic duly organized and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed in behalf of said County by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

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

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

**LAWRENCE-DOUGLAS COUNTY
BIOSCIENCE AUTHORITY, INC.**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the _____ of the **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a not for profit corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said organization, and that said instrument was signed and sealed in behalf of said organization by authority of its Board of Directors, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said organization.

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

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

EXHIBIT A

FORM OF SUBLEASE TERMS

DEFINED TERMS.

“Landlord” means the LDCBA.

“Leased Premises” means that portion of the Research Laboratory Facility and the Common Areas, which are leased by LDCBA to the subtenant.

“Master Lease” means that certain Lease Agreement between the Owners and LANDLORD, dated as of January 1, 2010.

“Owners” means the City of Lawrence, Kansas (the “City”) and Douglas County, Kansas (the “County.”)

“Research Laboratory Facility” means the following described real property, to-wit: LOT 2, BLOCK ONE, IN OREAD CENTER (A REPLAT OF LOT 1B OF A LOT SPLIT OF LOT ONE, OREAD WEST NO. 8), A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

“Tenant” means the subtenant.

INSURANCE.

a. TENANT shall be solely responsible for obtaining insurance coverage for its personal property and/or trade fixtures located on the Leased Premises, business interruption coverage, leasehold coverage, or any additional insurance coverage TENANT deems necessary.

b. TENANT agrees to secure and keep in force during the term of this Agreement, at TENANT's sole cost and expense, the following insurance policies and/or pay insurance costs as hereinafter set forth:

i. a Commercial General Liability policy with a combined single limit of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate limit for this location and a deductible not to exceed \$100,000. The policy shall name LANDLORD, LANDLORD's employees, LANDLORD's managing agent for the Research Laboratory Facility (if any), the Owners and their employees and agents, and any other persons, firms or corporations designated by LANDLORD, and TENANT as insured, and shall contain a clause that the insured will not cancel or change the insurance without first giving LANDLORD and the Owners fifteen (15) days prior written notice. TENANT's insurance shall provide primary coverage to the Owners or LANDLORD when any policy issued to the Owners or LANDLORD, as applicable, provides duplicate or similar coverage, in such circumstance the Owners' or the LANDLORD's policy will be excess over TENANT's policy. The insurance shall be provided by an insurance company approved by LANDLORD and a copy of the policy or a certificate of insurance shall be delivered to LANDLORD and the Owners prior to the Effective Date and annually thereafter at least 30 day prior to the expiration date of the expiring policy. If TENANT refuses or neglects to secure and maintain insurance policies complying with the provisions of this paragraph, LANDLORD may, but shall not be required to do so, secure and maintain such insurance policies and TENANT shall pay the cost thereof to LANDLORD, as Additional Rent, upon

demand. The insurance required by this paragraph is deemed a material aspect of this Agreement. TENANT's failure to provide insurance as described herein shall be deemed a breach of this Agreement and cause for cancellation upon three (3) days written notice by LANDLORD to TENANT.

ii. Workers' compensation insurance in accordance with statutory law, and employers' liability insurance with a limit of not less than \$500,000 per occurrence, on which the LANDLORD and the Owners are named as additional insureds.

iii. Such other insurance as LANDLORD reasonably deems necessary and prudent, or as required by Owners.

TOTAL OR PARTIAL DAMAGE.

a. TENANT will promptly notify LANDLORD in writing of any event, damage or condition to which this Paragraph is or may be applicable.

b. In the event of the total destruction of the Research Laboratory Facility, so that the same cannot be occupied by TENANT, this Agreement shall terminate including TENANT's obligation to pay any further Rent hereunder. Total destruction shall mean damage that will not be repaired in 180 days.

c. In the event of partial destruction, LANDLORD may make such repairs, at LANDLORD's expense, as are necessary to place the property in substantially the same condition as prior to the destruction. If LANDLORD and the Owners determine that such repairs shall not be made, this Agreement shall terminate, including TENANT's obligation to pay any further Rent hereunder. If LANDLORD and the Owners determine that such repairs shall be made, TENANT's rent shall be proportionately reduced in the event that a portion of the Leased Premises is not fit for occupancy for a portion of the term hereof; provided, however, that in the event that the repairs cannot be substantially completed within one hundred and eighty (180) days of the date that the partial destruction first occurred, then TENANT shall have the right to terminate this Lease Agreement including all further obligations created upon it hereunder, or to continue occupying the Leased Premises with a pro-rata reduction of the rent. TENANT will assign to LANDLORD and the Owners (or to any party designated by LANDLORD and the Owners) all insurance proceeds payable to TENANT under TENANT's insurance required under this Agreement with respect to the TENANT's improvements in the Leased Premises.

d. Repair or replacement of TENANT's trade fixtures and personal property shall be at TENANT's expense, unless such expense arises as the result of an intentional, reckless or negligent act or omission of LANDLORD, its agents, employees or representatives, in which case, such expense shall be borne solely by LANDLORD.

INDEMNIFICATION.

TENANT shall hold LANDLORD and the Owners and their successors, assigns, officers, directors, employees and agents harmless from and indemnify and defend each against any and all claims, demands, actions and suits and all costs, loss, damage, liability, expense (including attorneys' fees) penalties, and fines which may arise from or be claimed against any or all of TENANT, LANDLORD, the Owners, the Leased Premises or the Research Laboratory Facility, arising directly or indirectly from (a) the use or occupancy of the Leased Premises by TENANT, or (b) the failure of TENANT to comply with any and all laws, statutes, ordinances, rules or regulations applicable to the Research Laboratory Facility or Leased Premises, or (c) any third party claims based upon TENANT's breach of warranty, covenant, liability or obligation under this Lease Agreement.

HAZARDOUS MATERIALS.

a. **Defined Terms.** The following words and terms, as used in this Paragraph 11, shall have the following meanings:

i. **"Claim"** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

ii. **"Environmental Laws"** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

iii. **"Hazardous Materials"** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

iv. **"Manage" or "Management"** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

v. **"Release" or "Released"** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.

vi. **"Response" or "Respond"** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

b. **Tenant's Obligations with Respect to Environmental Matters.** During the Term of this Agreement, (i) TENANT shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) TENANT shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by TENANT in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, including installation of any underground storage tanks, without prior written disclosure to and prior written approval by LANDLORD and the Owners; (iii) TENANT shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, TENANT shall not dispose of Hazardous Materials in dumpsters provided by LANDLORD for tenant use; (v) TENANT shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) TENANT shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) TENANT shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, TENANT shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws which are or which are allegedly violate (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

c. **Copies of Notices.** During the Term of this Lease, as extended, if applicable, TENANT shall provide LANDLORD promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Environmental Protection Agency, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, TENANT shall provide LANDLORD promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

d. **Landlord's Right to Inspect.** LANDLORD and LANDLORD's employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to TENANT (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with TENANT's business in the Leased Premises, for the purpose of (i) determining TENANT's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. LANDLORD and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by TENANT or its agents, employees, contractors or invitees. TENANT agrees to cooperate with such investigations by providing any relevant information requested by LANDLORD. TENANT may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the LANDLORD's prior written consent.

e. **Tests and Reports.** Within ten (10) days of TENANT's receipt of a written request by LANDLORD, but in no event more often than semi-annually, unless Hazardous Materials are discovered

on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event LANDLORD hereby reserves the right to request the following described documents more often, TENANT shall provide LANDLORD with (i) copies of all environmental reports and tests obtained by TENANT; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by TENANT with respect to any Hazardous Materials; (iii) copies of any permits issued to TENANT under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by TENANT to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. TENANT shall provide LANDLORD with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that TENANT complies with all Environmental Laws relating to the Leased Premises.

f. **Tenant's Obligation to Respond.** If TENANT's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, TENANT shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

g. **Landlord's Right to Act.** In the event that TENANT shall fail to comply with any of its obligations under this Paragraph as and when required hereunder, LANDLORD shall have the right (but not the obligation) to take such action as is required to be taken by TENANT hereunder and in such event, TENANT shall be liable and responsible to LANDLORD for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by LANDLORD in connection with such matters. TENANT shall reimburse LANDLORD immediately upon demand for all such amounts for which TENANT is liable.

h. **Indemnification.** Notwithstanding anything contained in this Agreement to the contrary, TENANT shall reimburse, defend, indemnify and hold LANDLORD and Owners, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

i. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually Managed, released or disposed of on or from the Leased Premises by TENANT (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

ii. Any actual illness, disability, injury, or death of any person in any manner arising out of exposure to Hazardous Materials Managed or Released by TENANT on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and

iii. Any actual failure of TENANT on the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under subparagraph (b) of this [Section][Paragraph]; and

iv. Any failure by TENANT to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of TENANT under this Lease shall expressly exclude any obligation for the pre-existing environmental condition or Release of the Leased Premises prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against LANDLORD for which LANDLORD is entitled to indemnity hereunder, LANDLORD shall notify TENANT of such Claim or assertion of liability and thereupon TENANT shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of TENANT under this Paragraph shall survive any termination or expiration of this Lease.

i. **Environmental Assessment Requirement.** TENANT shall, within 60 days of the expiration of the Lease, provide documentation in such form reasonably acceptable to LANDLORD, that the general environmental condition of the Leased Premises is in compliance with all Environmental Laws and are in at least the same condition as shown in the Phase I Environmental Assessment provided by LANDLORD to TENANT at the commencement of this Sublease Agreement. If such documentation is not delivered prior to such 60th day, then LANDLORD may arrange for completion of same. The reasonable cost of such documentation obtained by LANDLORD or TENANT pursuant to this provision shall be paid by TENANT or reimbursable to LANDLORD by TENANT (if completed by LANDLORD) promptly upon LANDLORD's furnishing TENANT with evidence of costs incurred therefor.

AMERICANS WITH DISABILITIES ACT.

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that TENANT has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. TENANT further acknowledges and agrees that except as may otherwise be specifically provided herein, TENANT accepts the Leased Premises in "as-is" condition and agrees that neither LANDLORD nor Owners make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If required by TENANT, TENANT shall be solely responsible for all costs related to work necessary to conform the TENANT's Leased Premises to the ADA.

MASTER LEASE.

a. This Agreement is and shall at all times be subject and subordinate to the Master Lease. Nothing in this Agreement shall be deemed to amend or modify any of the terms contained in the Master Lease, and to the extent any of the terms contained herein purport to grant TENANT greater rights than LANDLORD has been granted pursuant to the terms of the Master Lease, the rights herein granted shall be strictly limited so as not to exceed the rights of LANDLORD under the Master Lease.

b. TENANT agrees not to do or omit to do anything that would cause a default under the Master Lease. During the Initial Term and any renewal terms of this Agreement and for all periods subsequent for obligations which arise prior to the termination of this Agreement, TENANT does hereby expressly assume and agree to perform and comply with, for the benefit of LANDLORD, each and every

obligation of LANDLORD under the Master Lease to the extent that the same relate to the Leased Premises ("TENANT'S Assumed Obligations").

c. TENANT shall hold LANDLORD free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of TENANT'S failure to comply with or perform TENANT'S Assumed Obligations.

OWNERS CONSENT.

By signing below, the Owners consent to this Agreement, but such consent shall not: (a) except for obligations of TENANT under this Agreement in favor of Owners, create privity of contract between Owners and TENANT; (b) be deemed to have amended the Master Lease in any regard; (c) be construed as a waiver of Owners' right to consent to any assignment or further sublease of the Master Lease by LANDLORD; or (d) relive LANDLORD of any of its obligations under the Master Lease.

TERMINATION OF MASTER LEASE.

TENANT agrees that in the event that (i) LANDLORD breaches any covenant or fails to satisfy any contingency set forth in the Master Lease, or (ii) Owners assert any right of cancellation or termination given to Owners under the Master Lease, and any of the foregoing events under clauses (i) and (ii) results in the cancellation or termination of the Master Lease, or (iii) the Master Lease is terminated, cancelled, or surrendered for any other reason, then this Agreement shall likewise be cancelled and terminated.

SCHEDULE I

Schedule of Basic Rent Payments

Rental Payment Date	Principal Portion	Cumulative Outstanding Principal	Estimated Interest Portion*	Estimated Total Payment
8/1/2010	\$ 12,500.00	n/a	-	\$ 12,500.00
2/1/2011	12,500.00	n/a	-	12,500.00
8/1/2011	12,500.00	n/a	-	12,500.00
2/1/2012	12,500.00	n/a	-	12,500.00
8/1/2012	12,500.00	n/a	-	12,500.00
2/1/2013	12,500.00	n/a	-	12,500.00
8/1/2013	12,500.00	n/a	-	12,500.00
2/1/2014	12,500.00	n/a	-	12,500.00
8/1/2014	12,500.00	n/a	-	12,500.00
2/1/2015	12,500.00	\$ 2,900,000.00	-	12,500.00
8/1/2015	40,000.00	2,860,000.00	58,000.00	98,000.00
2/1/2016	40,000.00	2,820,000.00	57,200.00	97,200.00
8/1/2016	42,500.00	2,777,500.00	56,400.00	98,900.00
2/1/2017	42,500.00	2,735,000.00	55,550.00	98,050.00
8/1/2017	45,000.00	2,690,000.00	54,700.00	99,700.00
2/1/2018	45,000.00	2,645,000.00	53,800.00	98,800.00
8/1/2018	47,500.00	2,597,500.00	52,900.00	100,400.00
2/1/2019	47,500.00	2,550,000.00	51,950.00	99,450.00
8/1/2019	50,000.00	2,500,000.00	51,000.00	101,000.00
2/1/2020	50,000.00	2,450,000.00	50,000.00	100,000.00
8/1/2020	52,500.00	2,397,500.00	49,000.00	101,500.00
2/1/2021	52,500.00	2,345,000.00	47,950.00	100,450.00
8/1/2021	55,000.00	2,290,000.00	46,900.00	101,900.00
2/1/2022	55,000.00	2,235,000.00	45,800.00	100,800.00
8/1/2022	57,500.00	2,177,500.00	44,700.00	102,200.00
2/1/2023	57,500.00	2,120,000.00	43,550.00	101,050.00
8/1/2023	60,000.00	2,060,000.00	42,400.00	102,400.00
2/1/2024	60,000.00	2,000,000.00	41,200.00	101,200.00
8/1/2024	65,000.00	1,935,000.00	40,000.00	105,000.00
2/1/2025	65,000.00	1,870,000.00	38,700.00	103,700.00
8/1/2025	70,000.00	1,800,000.00	37,400.00	107,400.00
2/1/2026	70,000.00	1,730,000.00	36,000.00	106,000.00
8/1/2026	72,500.00	1,657,500.00	34,600.00	107,100.00
2/1/2027	72,500.00	1,585,000.00	33,150.00	105,650.00

8/1/2027	77,500.00	1,507,500.00	31,700.00	109,200.00
2/1/2028	77,500.00	1,430,000.00	30,150.00	107,650.00
8/1/2028	82,500.00	1,347,500.00	28,600.00	111,100.00
2/1/2029	82,500.00	1,265,000.00	26,950.00	109,450.00
8/1/2029	90,000.00	1,175,000.00	25,300.00	115,300.00
2/1/2030	90,000.00	1,085,000.00	23,500.00	113,500.00
8/1/2030	95,000.00	990,000.00	21,700.00	116,700.00
2/1/2031	95,000.00	895,000.00	19,800.00	114,800.00
8/1/2031	102,500.00	792,500.00	17,900.00	120,400.00
2/1/2032	102,500.00	690,000.00	15,850.00	118,350.00
8/1/2032	107,500.00	582,500.00	13,800.00	121,300.00
2/1/2033	107,500.00	475,000.00	11,650.00	119,150.00
8/1/2033	115,000.00	360,000.00	9,500.00	124,500.00
2/1/2034	115,000.00	245,000.00	7,200.00	122,200.00
8/1/2034	122,500.00	122,500.00	4,900.00	127,400.00
2/1/2035	122,500.00	-	2,450.00	124,950.00
Totals	\$3,025,000.00		\$1,413,800.00	\$4,438,800.00

* Interest rate is estimated at 4.0%. Actual interest portion will be determined pursuant to **Section 5.1** of the Lease.