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CITY OF PITTSBURG, KANSAS
COMMISSION AGENDA
Tuesday, May 28, 2019
5:30 PM

CALL TO ORDER BY THE MAYOR:

- a. Flag Salute Led by the Mayor
- b. Public Input

CONSENT AGENDA:

- a. Approval of the May 14, 2019, City Commission Meeting minutes.
- b. Approval of final payment in the amount of \$37,459.64 to Home Center Construction, Inc., of Pittsburg, KS, for the construction of the Partial Parallel Taxiway.
- c. Approval of Agreement No. 66-19 between the Secretary of Transportation and the City of Pittsburg for the construction of approximately 2,200 feet of 6-foot wide concrete trail along the north side of Memorial Drive from Walnut Street to the crosswalk near the western intersection of McNally Drive and Memorial Drive and, if approved, authorize the Mayor to sign the Agreement.
- d. Approval of staff recommendation to award the bid for the 2019 Asphalt Rejuvenation Project to Proseal, Inc., of El Dorado, Kansas, based on their low bid meeting specifications of \$1.02 per square yard for a total project cost of \$128,002.86, and authorize the Mayor to sign the contract agreement once prepared.
- e. Approval of the Appropriation Ordinance for the period ending May 28, 2019 subject to the release of HUD expenditures when funds are received.

ROLL CALL VOTE.

SPECIAL PRESENTATIONS:

- a. 2018 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) - Audrey Odermann of Mize Houser and Company PA, the City's auditing firm, will be present to review the City's 2018 audit and CAFR. **Receive for file.**

CITY OF PITTSBURG, KANSAS
COMMISSION AGENDA
Tuesday, May 28, 2019
5:30 PM

- b. ECONOMIC DEVELOPMENT QUARTERLY REPORT - Director of Economic Development Blake Benson and Darrell Pulliam, Director of the Kansas Polymer Research Center, will present the quarterly Economic Development Report. **Receive for file.**

CONSIDER THE FOLLOWING:

- a. ORDINANCE NO. S-1062 - Consider adopting Ordinance No. S-1062, authorizing the City of Pittsburg, Kansas, to issue Industrial Revenue Bonds (Northgate Plaza Project), Series 2019, in a principal amount not to exceed \$3,180,000, for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing, furnishing and equipping a commercial facility, including land, buildings, structures, improvements, fixtures, machinery and equipment; authorizing the issuer to enter into certain documents and actions in connection with the issuance of said bonds (sales tax exemption only). **Approve or disapprove Ordinance No. S-1062 and, if approved, authorize the Mayor to sign the necessary documents on behalf of the City.**

- b. PETITION AND AUTHORIZING RESOLUTION - 311 SOUTH BROADWAY - CURB AND SIDEWALK REPLACEMENT - Staff is recommending the acceptance of a petition and approval of Resolution No. 1221 authorizing the replacement of a sidewalk and curbing in front of 311 South Broadway. **Approve or disapprove staff recommendation and, if approved, authorize the Mayor to sign the Resolution on behalf of the City.**

NON-AGENDA REPORTS & REQUESTS:

ADJOURNMENT

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
May 14th, 2019

A Regular Session of the Board of Commissioners was held at 5:30 p.m. on Tuesday, May 14th, 2019, in the City Commission Room, located in the Law Enforcement Center, 201 North Pine, with Mayor Patrick O'Bryan presiding and the following members present: Sarah Chenoweth, Dan McNally and Chuck Munsell. Commissioner Dawn McNay was absent.

Mayor O'Bryan led the flag salute.

PUBLIC INPUT – INVOCATION - Reverend Mark Chambers of the First United Methodist Church provided an invocation.

APPROVAL OF MINUTES – On motion of Munsell, seconded by McNally, the Governing Body approved the April 23rd, 2019, City Commission Meeting minutes as presented. Motion carried. Absent: McNay.

DANCE HALL LICENSE – THE PITT – On motion of Munsell, seconded by McNally, the Governing Body approved the Dance Hall license renewal application submitted by Kyle Michael for The Pitt, located at 516 North Broadway and authorized the City Clerk to issue the license. Motion carried. Absent: McNay.

2019 FIREWORKS DISPLAY CONTRACT – On motion of Munsell, seconded by McNally, the Governing Body approved staff request to enter into a contract with J & M Displays, Inc., of Yarmouth, Iowa in the amount of \$20,000 for the 2019 Fourth of July fireworks display, and authorized the Mayor to sign the appropriate documents on behalf of the City. Motion carried. Absent: McNay.

EMERGENCY SOLUTIONS GRANT APPLICATION – On motion of Munsell, seconded by McNally, the Governing Body approved staff request to submit an Emergency Solutions Grant (ESG) application to the Kansas Housing Resources Corporation (KHRC) in the amount of \$236,500 for Homeless Services including prevention, rapid re-housing and day shelter services, and authorized the Mayor to sign the appropriate documents on behalf of the City. Motion carried. Absent: McNay.

APPROPRIATION ORDINANCE – On motion of Munsell, seconded by McNally, the Governing Body approved the Appropriation Ordinance for the period ending May 14th, 2019, subject to the release of HUD expenditures when funds are received with the following roll call vote: Yea: Chenoweth, McNally, Munsell and O'Bryan. Motion carried. Absent: McNay.

ECONOMIC DEVELOPMENT QUARTERLY REPORT – Presentation of the quarterly Economic Development Report was postponed. Absent: McNay.

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
May 14th, 2019

ADDENDUM TO AGREEMENT FOR MUNICIPAL ADVISOR SERVICES – On motion of Chenoweth, seconded by McNally, the Governing Body approved an Addendum to the Agreement for Municipal Advisor Services dated June 19th, 2017, with Baker Tilly Virchow Krause, LLP to provide financial analysis, project management and technical review and support, and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried with Munsell voting in opposition. Absent: McNay.

NON-AGENDA REPORTS & REQUESTS –

BI-MONTHLY BUDGET REVIEW - Director of Finance Jamie Clarkson provided the April 30, 2019, bi-monthly budget review. Absent: McNay.

DEPUTY FINANCE DIRECTOR INTRODUCTION – Director of Finance Jamie Clarkson introduced Larissa Bowman as the City’s newly hired Deputy Finance Director. Absent: McNay.

RIBBON CUTTING – Deputy City Manager Jay Byers announced that a Ribbon Cutting for the North Walnut Street Improvement Project (between 28th and 29th) will be held at 5:00 p.m. on Thursday, May 16th, 2019. Absent: McNay.

HUMAN RESOURCES DIRECTOR – City Manager Daron Hall announced that Tiffany Jarman has resigned as the City’s Human Resources Director. Mr. Hall further announced that Michelle Ducre has been appointed as the City’s Human Resources Director. Absent: McNay.

RESPONSE TO MR. STRENGTH’S RECENT COMMENT – Mayor O’Bryan responded to Mr. Strength’s recent comment that the commissioners ridicule Commissioner Munsell. Mayor O’Bryan indicated that he takes exception to Mr. Strength’s comments and sees no wrongdoing with the manner in which the Commission conducts business. Commissioner Munsell indicated that members of the City Commission don’t always agree, but there is never any animosity. Absent: McNay.

WEB PAGE WORDING REGARDING STREET SALES TAX FUNDS - Commissioner Munsell requested that the wording on the City’s web page in relation to the Street Sales Tax reflect the wording of the Ordinance regarding the purpose of the Street Sales Tax. It was the consensus of the Governing Body to discuss this item during the May 28th, 2019, Commission meeting. Absent: McNay.

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
May 14th, 2019

ADJOURNMENT: On motion of Chenoweth, seconded by McNally, the Governing Body adjourned the meeting at 5:52 p.m. Motion carried. Absent: McNay.

Patrick J. O'Bryan, Mayor

ATTEST:

Tammy Nagel, City Clerk



DEPARTMENT OF PUBLIC WORKS

(620) 231-4170

201 West 4th Street · Pittsburg KS
66762

www.pittks.org

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: May 22, 2019

SUBJECT: Agenda Item – May 28, 2019
Final Payment
AV-2018-45
Partial Parallel Taxiway Construction

The Contractor, Home Center Construction, Inc. of Pittsburg, KS, has completed all work on the above-referenced project and is now requesting final payment. A previously approved change order resulted in a net deduction of \$37,605.62 from the original contract amount of \$363,582.20. The change order makes the final construction amount of \$325,976.58.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, May 28, 2019. Action requested is for the approval or disapproval of final payment to Home Center Construction, Inc. in the amount of \$37,459.64. This project is being funded by a KDOT grant with a 90% KDOT/10% Local split. KDOT's grant share is capped at \$350,000.00.

Attachment: Final Payment Estimate

CONTRACTOR'S PROGRESS ESTIMATE

Contractor:	Home Center Const., Inc.	Sheet:	1 of 3
Address:	420 West Atkinson Pittsburg, KS 66762	Date:	04/26/19
		Lochner Job Number:	12300
and Sponsor:	City of Pittsburg, KS	Estimate No.:	4 FINAL
Project:	Atkinson Municipal Airport	AIP No.:	AV-2018-45

=====
 We submit herewith Estimate Number 4 FINAL under contract AV-2018-45 for the
 above-named improvement. A detailed account of the work completed and a record of the materials on site or in an
 approved storage is attached hereto.

STATEMENT OF ACCOUNT

Original Contract Amount		\$	363,582.20
Contract Revisions:			
(Through Change Order 1)		(\$37,605.62)	
(Through Supplement 0)		\$0.00	
Amount of Contract Revisions			(\$37,605.62)
New Contract Amount			\$325,976.58
Value of Work Performed to Date		\$325,976.58	
Value of Materials on Hand		\$0.00	
Total Value of Work and Materials			\$325,976.58
Less Previous Due Amount		\$288,516.94	
Less Previous Retainage Amount		\$32,057.44	
Total of Previous Requests			\$320,574.38
Amount of this Request			\$5,402.20
Less Amount to be Retained			\$0.00
Amount of Previous Retainage to be Released			\$32,057.44
BALANCE DUE CONTRACTOR			\$37,459.64

=====

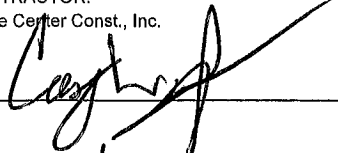
This payment estimate has been verified and payment recommended in accordance with the Specifications.

PROJECT ENGINEER:
Lochner

By: 

Dated: 04/26/2019

CONTRACTOR:
Home Center Const., Inc.

By: 

Dated: 4-29-19

Project Name: Atkinson Municipal Airport
 Sponsor: City of Pittsburg, KS
 Contractor: Home Center Const., Inc.
 Project Number: AV-2018-45

Sheet: 2 of 3
 Date: 4/26/19
 Lochner Job Number: 12300

PROGRESS ESTIMATE NO.: 4 FINAL

ITEM NO.	DESCRIPTION	ORIGINAL CONTRACT QUANTITY	** QUANTITY OVERRUN/UNDERRUN	CURRENT CONTRACT QUANTITY	QUANTITY COMPLETE TO DATE	UNIT	UNIT PRICE	EARNED TO DATE
1	Mobilization (See General Provisions Section 105)	100%	0%	100%	100%	L.S.	\$ 66,000.00	\$66,000.00
2	Temporary Marking, Lighting, & Barricades	100%	0%	100%	100%	L.S.	\$ 5,800.00	\$5,800.00
3	Saw Cut	230	0	230	230	L.F.	\$ 4.00	\$920.00
4	Asphalt Pavement Removal	21	0	21	21	S.Y.	\$ 57.00	\$1,197.00
5	Remove Existing Drainage Structures	1	0	1	1	L.S.	\$ 600.00	\$600.00
6	Salvage of Existing MITL's	1	0	1	1	L.S.	\$ 1,870.00	\$1,870.00
7	Embankment In Place (Obtained on Site)	2,860	0	2,860	2,860	C.Y.	\$ 6.50	\$18,590.00
8	Unsuitable Subgrade Removal and Replacement	100	89	189	189	C.Y.	\$ 20.00	\$3,780.00
9	Erosion Control Barrier (Straw Wattle)	120	0	120	120	L.F.	\$ 5.00	\$600.00
10	Erosion Control Blanket, Type 2C	4,990	0	4,990	4,990	S.Y.	\$ 0.70	\$3,493.00
11	Permanent Transition Mat	192	0	192	192	S.F.	\$ 12.00	\$2,304.00
12	Treated Subgrade (12")	2,685	0	2,685	2,685	S.Y.	\$ 17.20	\$46,182.00
13	Crushed Aggregate Base Course (6")	2,685	0	2,685	2,685	S.Y.	\$ 6.50	\$17,452.50
14	Bituminous Surface Course (4")	596.00	-167.75	428.25	428.25	Ton	\$ 205.00	\$87,791.25
15	Bituminous Prime Coat	769	-769	0	0	Gal.	\$ 4.00	\$0.00
16	Bituminous Tack Coat	256	0	256	256	Gal.	\$ 3.50	\$896.00
17	Temporary Pavement Marking	426	-426	0	0	S.F.	\$ 4.70	\$0.00
18	Reflectorized Pavement Marking	426	0	426	426	S.F.	\$ 4.70	\$2,002.20
19	Non-Reflectorized Pavement Marking	850	0	850	850	S.F.	\$ 4.00	\$3,400.00
20	24" RCP	271	0	271	271	L.F.	\$ 37.00	\$10,027.00
21	24" RCP End Section	2	0	2	2	E.A.	\$ 882.00	\$1,764.00
22	Install Standard Trash Guard	2	0	2	2	E.A.	\$ 2,000.00	\$4,000.00

** Quantity Changed by Change Order or Supplemental Agreement.

Project Name: Atkinson Municipal Airport
 Sponsor: City of Pittsburg, KS
 Contractor: Home Center Const., Inc.
 Project Number: AV-2018-45

Sheet: 3 of 3
 Date: 4/26/19
 Lochner Job Number: 12300

PROGRESS ESTIMATE NO.: 4 FINAL

ITEM NO.	DESCRIPTION	ORIGINAL CONTRACT QUANTITY	** QUANTITY OVERRUN/ UNDERRUN	CURRENT CONTRACT QUANTITY	QUANTITY COMPLETE TO DATE	UNIT	UNIT PRICE	EARNED TO DATE
23	Conventional Underdrain (4")	586	0	586	586	L.F.	\$ 11.00	\$6,446.00
24	Non-Perforated Outlet Pipe (4")	33	0	33	33	L.F.	\$ 10.00	\$330.00
25	Underdrain Cleanout Riser	2	0	2	2	E.A.	\$ 600.00	\$1,200.00
26	Splash Pad	1	0	1	1	E.A.	\$ 500.00	\$500.00
27	4'x4' Area Inlet	1	0	1	1	E.A.	\$ 4,506.00	\$4,506.00
28	Permanent Seeding	2	0	2	2	AC.	\$ 1,000.00	\$2,000.00
29	Temporary Seeding	2	-2	0	0	AC.	\$ 1,000.00	\$0.00
30	Topsoiling	1	0	1	1	L.S.	\$ 7,000.00	\$7,000.00
31	Mulching	1	0	1	1	AC.	\$ 1,500.00	\$1,500.00
32	Install Cable In Duct (1/c, #8 AWG, 5kV, L-824C)	1,530	245	1,775	1,775	L.F.	\$ 1.65	\$2,928.75
33	Bare Counterpoise Wire (#6 AWG) Installed In Separate Trench	1,090	0	1,090	1,090	L.F.	\$ 1.10	\$1,199.00
34	1" PVC Electrical Duct and Trench	1,160	16	1,176	1,176	L.F.	\$ 2.63	\$3,092.88
35	Relocate M.I.T.L. (LED), Base Mounted (Blue Lens)	7	2	9	9	E.A.	\$ 475.00	\$4,275.00
36	M.I.T.L. (LED), Base Mounted (Blue Lens)	17	1	18	18	E.A.	\$ 685.00	\$12,330.00

Total Work Performed to Date: \$325,976.58
Original Contract Amount: \$363,582.20
Total Revisions to Date: -\$37,605.62
Total Value of Contract: \$325,976.58

% Project Complete Dollars: 100.0%
 ** Quantity Changed by Change Order or Supplemental Agreement.

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: May 22, 2019

SUBJECT: Memo Agenda Item – May 29, 2019
Memorial Drive Trail Agreement No. 66-19 between the City of Pittsburg and the Secretary of Transportation for the Construction of Kansas Department of Transportation (KDOT) Project Number 19 TE-0478-01

The City has continued efforts to improve bicycle and pedestrian travel around the community. The City applied for and received a Transportation Alternatives (TA) Grant to construct approximately 2,200 feet of 6-foot wide concrete trail along the north side of Memorial Drive from Walnut Street to the crosswalk near the western intersection of McNally Drive and Memorial Drive. The estimated construction cost of the trail improvements is \$110,000.00. Grant funding and trail funds would pay for the project. The funding from the KDOT TA Grant would be for 80% of construction with a maximum of \$88,000.00.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, May 28, 2019. Action necessary will be the approval or disapproval of entering into Agreement No. 66-19 with the Secretary of Transportation and authorize the Mayor to sign the agreement on behalf of the City of Pittsburg.

If you have any questions regarding this matter, please do not hesitate to contact me.

Attachment: Proposed Memorial Drive Trail Agreement with KDOT

Cc: Tammy Nagel, City Clerk
Project File
Memo File

PROJECT NO. 19 TE-0478-01
TA-T047(801)
TRANSPORTATION ALTERNATIVES PROJECT
MEMORIAL DRIVE TRAIL
CITY OF PITTSBURG, KANSAS

AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Pittsburg, Kansas** (“City”), **collectively**, the “Parties.”

RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Alternatives (TA) projects.
- B. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TA projects to eligible state agencies or local governments.
- C. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Alternatives Provision of the current Federal-Aid Transportation Act.
- D. The City has requested and Secretary has authorized a Transportation Alternatives (TA) project, as further described in this Agreement.
- E. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TA projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“City”** means the City of Pittsburg, Kansas, with its place of business at 201 W. 4th Street, Pittsburg, KS 66762.

3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **constructing a six-foot sidewalk with grading and draining improvements on Memorial Drive Trail from the west intersection of McNally Road and Memorial Drive to Walnut Street in Pittsburg, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
24. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article IV, paragraph 2, to secure the investment of federal funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.
25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$88,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$110,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current the American Institute of Architects (AIA) standards, the Secretary of the Interior’s Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines, KDOT’s Design Engineering Requirements, the current Local Projects LPA Project Development Manual, Bureau of Local Project’s (BLP’s) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design’s road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology’s Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

4. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer, licensed professional architect, and/or licensed landscape architect, as applicable, responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule’s due dates as issued by KDOT, exclusive of delays beyond the Consultant’s control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- (c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Design Exception Indemnification.** Any design exception to the current version of the American Association of State Highway and Transportation Officials (AASHTO) Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the City, the City’s employees, or subcontractors.

9. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

10. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and

Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. *Intentionally Deleted.*

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

11. **Removal of Encroachments**. The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

12. **Future Encroachments**. Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will

require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

13. **Utilities.** The City agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the **KDOT Utility Accommodation Policy (UAP)**, as amended or supplemented.

(b) **Status of Utilities.** The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) **Time of Relocation.** The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) **Permitting of Private Utilities.** The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) **Indemnification.** To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) **Cost of Relocation.** Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

14. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) **Removal of Hazardous Waste.** The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City

shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

15. Inspections. The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

16. Traffic Control. The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance

pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

17. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

18. **Maintenance.** When the Project is completed and final acceptance is issued and until expiration of the Useful Life Period, the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

19. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$110,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$110,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

20. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

21. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

22. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

23. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

SPECIAL TRANSPORTATION ENHANCEMENT REQUIREMENTS:

1. **No 4(f) Status.** It is the Parties' intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135 ("4(f) status"), except as otherwise modified by this Agreement.

(a) **Transportation Alternatives.** Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

(b) **4(f) Determinations.** The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

2. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is 10 years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Insurance.** If the Project includes improvements to a building, the City will purchase and maintain insurance for property damage to the building continuously during the Useful Life Period of the Project in an amount equal to or in excess of the federal funds expended on the Project.

(c) Change in Public Use. After the Project is completed and during the entire Useful Life Period, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

(d) Recapture of Federal Investment.

(i) During the first 5 years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary 100% of the federal funds invested in the Project.

(ii) Following the first 5 years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the City shall pay to the Secretary as recapture of federal funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \frac{\text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use}}{\text{Recapture Amount}} = \text{Recapture Amount}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary’s Chief of Fiscal Services.

ARTICLE V

GENERAL PROVISIONS:

1. Incorporation of Design Plans. The final Design Plans for the Project are by this reference made a part of this Agreement.

2. Civil Rights Act. The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

3. Contractual Provisions. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

4. Headings. All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

5. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF PITTSBURG, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Burt Morey, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)



DEPARTMENT OF PUBLIC WORKS
201 West 4th Street · Pittsburg KS 66762

(620) 231-4170
www.pittks.org

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: May 21, 2019

SUBJECT: Agenda Item – May 28, 2019
Disposition of Bids
2019 Asphalt Rejuvenation Project

Bids were received on Tuesday, May 21st, 2019, for the 2019 Asphalt Rejuvenation Project. Bid solicitations were sent to five (5) contractors, however, only one bid was received (see attached bid tab sheet). After reviewing the bids received, staff is recommending that the bid be awarded to Proseal, Inc., of El Dorado, Kansas, based on the low bid meeting specifications of \$1.02 per square yard. The total project is based on 125,493 square yards or a total project cost of \$128,002.86. Proseal, Inc. was the successful bidder last year with a bid of \$1.02 per square yard.

This work consists of furnishing all labor, material and equipment necessary to perform the application of an asphalt rejuvenating agent to asphaltic concrete surface courses. The application of this rejuvenating agent is expected to add life to recently paved streets extending the length of time that they will require major maintenance in the future. Refer to attached plan sheet for project locations.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, May 28th, 2019. Action necessary will be approval or disapproval of staff's recommendation. The project will be paid by Street Sales Tax Funds.

Attachments: Bid Tab Sheet
Plans of Project Locations

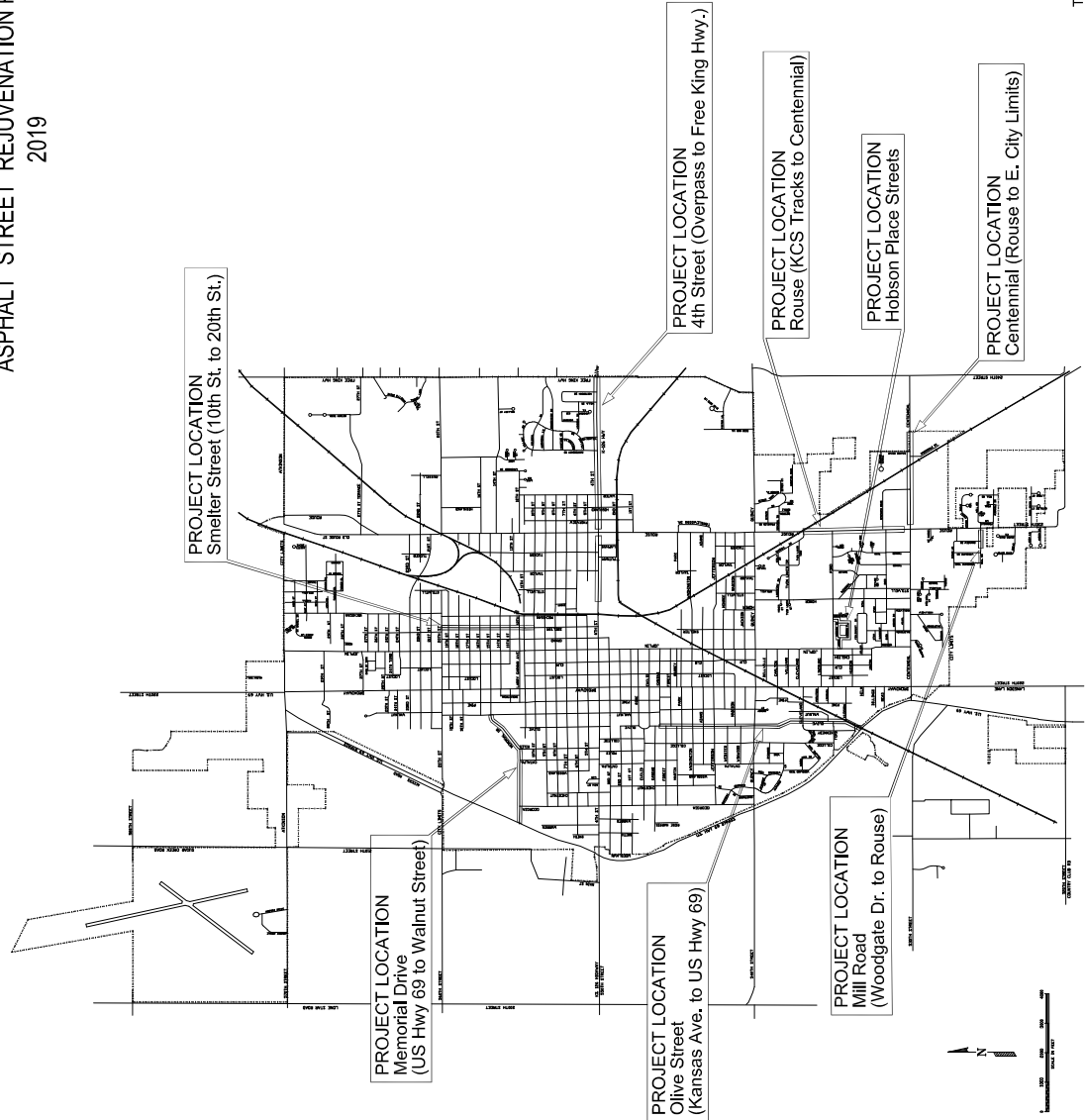


The City of Pittsburg, Kansas
Recapitulation of Bids
2019 Asphalt Rejuvenation Project
Tuesday, May 21st, 2019--2:00 p.m.

Name & Address of Bidder	Base Bid Per Square Yard (125,493 SY)
Proseal, Inc. P.O. Box 741 El Dorado, Kansas 67042	\$1.02 Total - \$128,002.86 Reclamite

CITY OF PITTSBURGH

STREET IMPROVEMENTS ASPHALT STREET REJUVENATION PROJECT 2019



INDEX OF SHEETS

NO.	TITLE
1.	Title Sheet
2.	Plan View & Quantities (N. Smeller - 10th Street to 20th Street)
3.	Plan View & Quantities (Memorial Drive - Walnut Street to US Highway 69 Bypass)
4.	Plan View & Quantities (East Fourth Street - Overpass to Free King Highway)
5.	" " (East Fourth Street - Overpass to Free King Highway)
6.	Plan View & Quantities (Olive Street - Kansas Avenue to US Highway 69 Bypass)
7.	" " (Olive Street - Kansas Avenue to US Highway 69 Bypass)
8.	Plan View & Quantities (Rouse Avenue - KCS Tracks to Centennial Drive)
9.	Plan View & Quantities (Hobson Addition - Hobson Drive & Hobson Place)
10.	Plan View & Quantities (Centennial Drive - Rouse Avenue to East City Limits)
11.	Plan View & Quantities (Mill Road - Rouse Avenue to West of Oakview Drive)
12.	General Traffic Control
13.	Channelizing Devices
14.	Road Closures
15.	Traffic Control Access
16.	Traffic Control Signs

PUBLIC OFFICIALS

MAYOR Patrick O'Bryan
CITY COUNSEL MEMBERS Dawn McNeay
 Sarah Chenoweth
 Daniel McNelly
 Chuck Munsell
CITY MANAGER Daron Hall
CITY CLERK Tammy Nagel
CITY ATTORNEY Henry Menghini
DIRECTOR OF PUBLIC WORKS Cameron Alden



Total Sealing Quantity for All Projects = 125,493 S.Y's.

VENDOR SET: 99 City of Pittsburg, KS

BANK: * ALL BANKS

DATE RANGE: 5/08/2019 THRU 5/21/2019

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
C-CHECK	VOID CHECK	V	5/10/2019			184538		
C-CHECK	VOID CHECK	V	5/10/2019			184539		
C-CHECK	VOID CHECK	V	5/10/2019			184544		
C-CHECK	VOID CHECK	V	5/10/2019			184579		
C-CHECK	VOID CHECK	V	5/10/2019			184580		
C-CHECK	VOID CHECK	V	5/10/2019			184581		
C-CHECK	VOID CHECK	V	5/10/2019			184584		
C-CHECK	VOID CHECK	V	5/10/2019			184585		
C-CHECK	VOID CHECK	V	5/10/2019			184586		
C-CHECK	VOID CHECK	V	5/17/2019			184617		
C-CHECK	VOID CHECK	V	5/17/2019			184618		

* * T O T A L S * *

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0.00	0.00	0.00
HAND CHECKS:	0.00	0.00	0.00
DRAFTS:	0.00	0.00	0.00
EFT:	0.00	0.00	0.00
NON CHECKS:	0.00	0.00	0.00
VOID CHECKS:	11 VOID DEBITS 0.00		
	VOID CREDITS 0.00	0.00	0.00

TOTAL ERRORS: 0

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 99 BANK: * TOTALS:	11	0.00	0.00
BANK: * TOTALS:	11	0.00	0.00

VENDOR SET: 99 City of Pittsburg, KS
 BANK: 80144 BMO HARRIS BANK
 DATE RANGE: 5/08/2019 THRU 5/21/2019

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0321	KP&F	D	5/17/2019			000000		45,688.46
0728	ICMA	D	5/17/2019			000000		660.00
1050	KPERS	D	5/17/2019			000000		42,760.46
5904	TASC	D	5/17/2019			000000		6,432.71
6415	GREAT WEST TANDEM KPERS 457	D	5/17/2019			000000		4,363.83
7290	DELTA DENTAL OF KANSAS INC	D	5/10/2019			000000		3,141.50
7290	DELTA DENTAL OF KANSAS INC	D	5/17/2019			000000		5,493.60
7877	CORESOURCE	D	5/09/2019			000000		6,881.61
7877	CORESOURCE	D	5/16/2019			000000		30,712.46
8051	AFLAC GROUP INSURANCE	D	5/21/2019			000000		3,245.72
0046	ETTINGERS OFFICE SUPPLY	E	5/13/2019			004502		1,520.92
0055	JOHN'S SPORT CENTER, INC.	E	5/13/2019			004503		600.00
0087	FORMS ONE, LLC	E	5/13/2019			004504		1,246.38
0101	BUG-A-WAY INC	E	5/13/2019			004505		110.00
0105	PITTSBURG AUTOMOTIVE INC	E	5/13/2019			004506		1,109.78
0112	MARRONES INC	E	5/13/2019			004507		680.34
0133	JIM RADELL CONSTRUCTION INC	E	5/13/2019			004508		1,230.00
0194	KANSAS STATE TREASURER	E	5/13/2019			004509		2,973.50
0207	PEPSI-COLA BOTTLING CO OF PITT	E	5/13/2019			004510		63.00
0272	BO'S 1 STOP INC	E	5/13/2019			004511		1,460.00
0276	JOE SMITH COMPANY, INC.	E	5/13/2019			004512		286.73
0286	R & R PRODUCTS INC	E	5/13/2019			004513		182.80

VENDOR SET: 99 City of Pittsburg, KS

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0317	KUNSHEK CHAT & COAL CO, INC.	E	5/13/2019			004514		7,366.54
0335	CUSTOM AWARDS, LLC	E	5/13/2019			004515		25.00
0438	SEWERS, DRAINS & MORE	E	5/13/2019			004516		185.00
0577	KANSAS GAS SERVICE	E	5/13/2019			004517		4,861.76
0636	SAM BROWN & SON SHEET METAL	E	5/13/2019			004518		255.00
0659	PAYNES INC	E	5/13/2019			004519		75.00
0726	PITTSBURG STATE UNIVERSITY	E	5/13/2019			004520		475.00
0746	CDL ELECTRIC COMPANY INC	E	5/13/2019			004521		75.00
0779	PITTSBURG COMMUNITY THEATRE	E	5/13/2019			004522		3,969.01
0784	MIRACLE RECREATION EQUIP CO	E	5/13/2019			004523		297.62
0806	JOHN L CUSSIMANIO	E	5/13/2019			004524		255.00
0823	TOUCHTON ELECTRIC INC	E	5/13/2019			004525		347.21
0829	CROWN PRODUCTS INC	E	5/13/2019			004526		1,473.45
1097	BARCO MUNICIPAL PRODUCTS INC	E	5/13/2019			004527		1,596.00
1199	SCURLOCK INDUSTRIES CORP	E	5/13/2019			004528		4,308.29
1290	CMI INC	E	5/13/2019			004529		79.88
1478	KANSASLAND TIRE OF PITTSBURG	E	5/13/2019			004530		32.04
1619	MIDWEST TAPE, LLC	E	5/13/2019			004531		24.99
1631	RUTH WEGNER	E	5/13/2019			004532		5.00
1792	B&L WATERWORKS SUPPLY, LLC	E	5/13/2019			004533		669.06
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	5/13/2019			004534		2,674.68
2161	RECORDED BOOKS, LLC	E	5/13/2019			004535		162.85

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
2841	KDHE	E	5/13/2019			004536		1,514.00
2921	DP2 BILLING SOLUTIONS, LLC	E	5/13/2019			004537		4,631.29
3571	LARRY'S DIESEL REPAIR LLC	E	5/13/2019			004538		334.29
4307	HENRY KRAFT, INC.	E	5/13/2019			004539		101.73
4390	SPRINGFIELD JANITOR SUPPLY, IN	E	5/13/2019			004540		367.58
4618	TRESA MILLER	E	5/13/2019			004541		1,064.05
5049	CRH COFFEE INC	E	5/13/2019			004542		80.55
5275	US LIME COMPANY-ST CLAIR	E	5/13/2019			004543		9,130.74
5482	JUSTIN HART	E	5/13/2019			004544		60.00
6175	HENRY C MENGHINI	E	5/13/2019			004545		666.30
6528	GALE GROUP/CENGAGE	E	5/13/2019			004546		79.18
6577	GREENSPRO INC	E	5/13/2019			004547		2,889.00
7028	MATTHEW L. FRYE	E	5/13/2019			004548		400.00
7038	SIGNET COFFEE ROASTERS	E	5/13/2019			004549		45.00
7448	CARUS CORPORATION	E	5/13/2019			004550		2,608.32
7629	EARLES ENGINEERING & INSPECTIO	E	5/13/2019			004551		28,461.00
7647	GEORGE JAMES EPPLE	E	5/13/2019			004552		525.00
7667	BRENT'S ELECTRIC, LLC	E	5/13/2019			004553		1,706.49
7841	AD-WEAR & SPECIALTY OF TEXAS I	E	5/13/2019			004554		1,832.07
0046	ETTINGERS OFFICE SUPPLY	E	5/20/2019			004555		255.97
0055	JOHN'S SPORT CENTER, INC.	E	5/20/2019			004556		352.50
0087	FORMS ONE, LLC	E	5/20/2019			004557		664.80

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0101	BUG-A-WAY INC	E	5/20/2019			004558		50.00
0105	PITTSBURG AUTOMOTIVE INC	E	5/20/2019			004559		566.96
0112	MARRONES INC	E	5/20/2019			004560		84.19
0117	THE MORNING SUN	E	5/20/2019			004561		66.76
0292	UNIFIRST CORPORATION	E	5/20/2019			004562		50.60
0335	CUSTOM AWARDS, LLC	E	5/20/2019			004563		700.07
0577	KANSAS GAS SERVICE	E	5/20/2019			004564		98.67
0631	TRI-STATE BUILDING & SUPPLY CO	E	5/20/2019			004565		44,630.00
0746	CDL ELECTRIC COMPANY INC	E	5/20/2019			004566		504.81
0823	TOUCHTON ELECTRIC INC	E	5/20/2019			004567		129.00
0866	AVFUEL CORPORATION	E	5/20/2019			004568		20,642.46
1238	SEWARD ELECTRIC, INC.	E	5/20/2019			004569		816.60
1478	KANSASLAND TIRE OF PITTSBURG	E	5/20/2019			004570		15.50
2005	GALLS PARENT HOLDINGS, LLC	E	5/20/2019			004571		423.46
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	5/20/2019			004572		1,724.60
2767	BRENNTAG SOUTHWEST, INC	E	5/20/2019			004573		3,384.32
2825	STATE OF KANSAS	E	5/20/2019			004574		452.05
2960	PACE ANALYTICAL SERVICES INC	E	5/20/2019			004575		2,599.00
4390	SPRINGFIELD JANITOR SUPPLY, IN	E	5/20/2019			004576		3.24
4452	RYAN INSURANCE, LLC	E	5/20/2019			004577		15.00
4603	KANSAS GOLF AND TURF INC	E	5/20/2019			004578		253.57
5855	SHRED-IT US JV LLC	E	5/20/2019			004579		205.92

VENDOR SET: 99 City of Pittsburg, KS
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5883	SPROULS CONSTRUCTION INC	E	5/20/2019			004580		114,264.98
6203	THE SOUTHWEST PAPER CO INC	E	5/20/2019			004581		251.28
6402	BEAN'S TOWING & AUTO BODY	E	5/20/2019			004582		4,605.35
6846	GREENWAY ELECTRIC, INC.	E	5/20/2019			004583		589.76
7038	SIGNET COFFEE ROASTERS	E	5/20/2019			004584		41.25
7049	ED ROEHR AUTO RADIO, INC	E	5/20/2019			004585		176.25
7377	US AWARDS INC	E	5/20/2019			004586		650.00
7514	NTHERM, LLC	E	5/20/2019			004587		569.61
7629	EARLES ENGINEERING & INSPECTIO	E	5/20/2019			004588		1,682.00
7655	HW ACQUISITIONS, PA	E	5/20/2019			004589		259.00
7667	BRENT'S ELECTRIC, LLC	E	5/20/2019			004590		198.37
7733	TROY GRAHAM	E	5/20/2019			004591		150.00
8079	GWG JOPLIN, LLC	E	5/20/2019			004592		60.00
4897	JOHN VINARDI	R	5/09/2019			184535		318.00
2004	AIRE-MASTER OF AMERICA, INC.	R	5/10/2019			184536		17.22
0523	AT&T	R	5/10/2019			184537		7,034.81
6956	BSN SPORTS, INC	R	5/10/2019			184540		156.33
5283	CLASS LTD	R	5/10/2019			184541		267.60
4263	COX COMMUNICATIONS KANSAS LLC	R	5/10/2019			184542		29.40
4263	COX COMMUNICATIONS KANSAS LLC	R	5/10/2019			184543		2,152.83
4263	COX COMMUNICATIONS KANSAS LLC	R	5/10/2019			184545		13.23
4263	COX COMMUNICATIONS KANSAS LLC	R	5/10/2019			184546		97.08

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
4263	COX COMMUNICATIONS KANSAS LLC	R	5/10/2019			184547		83.28
7517	CRAW-KAN TELEPHONE COOPERATIVE	R	5/10/2019			184548		979.98
0375	WICHITA WATER CONDITIONING, IN	R	5/10/2019			184549		18.50
8074	DEHN DAVENPORT	R	5/10/2019			184550		40.00
8076	JONATHAN D DELANGE	R	5/10/2019			184551		40.00
4885	ERGOMETRICS & APPLIED PERSONNE	R	5/10/2019			184552		221.59
6740	FELD FIRE	R	5/10/2019			184553		250.00
8086	FELLER'S FOOD SERVICE EQUIPMEN	R	5/10/2019			184554		18,106.78
6358	FIRE X INC	R	5/10/2019			184555		47.00
7993	GERALD E WARREN, II	R	5/10/2019			184556		11,000.44
7995	HERITAGE TRACTOR INC	R	5/10/2019			184557		5.69
6923	HUGO'S INDUSTRIAL SUPPLY INC	R	5/10/2019			184558		2,134.66
7680	IMA, INC.	R	5/10/2019			184559		3,125.00
2877	KDHE - BUREAU OF WATER	R	5/10/2019			184560		60.00
7938	ROSANO DEL PILAR MENDEZ	R	5/10/2019			184561		25.00
7550	MOBILE WIRELESS, LLC	R	5/10/2019			184562		5,657.00
8085	MSW INC	R	5/10/2019			184563		1,893.22
6942	MULBERRY LIMESTONE QUARRY	R	5/10/2019			184564		126.00
7392	ASSURECO RISK MANAGEMENT & REG	R	5/10/2019			184565		350.00
5911	PB HOIDALE CO INC	R	5/10/2019			184566		1,372.47
1	POMMERT, ANDREW	R	5/10/2019			184567		40.00
0175	REGISTER OF DEEDS	R	5/10/2019			184568		59.00

VENDOR SET: 99 City of Pittsburg, KS
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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
6571	ROUTE 66 ELECTRIC, LLC	R	5/10/2019			184569		303.50
8067	HAROLD LEROY SMITH	R	5/10/2019			184570		880.00
7270	SECURITY 1ST TITLE, LLC	R	5/10/2019			184571		680.00
6377	SOUTHEAST KANSAS RECYCLING CEN	R	5/10/2019			184572		682.00
7890	SYN-TECH SYSTEMS INC	R	5/10/2019			184573		1,275.00
7381	TAYLORMADE CO	R	5/10/2019			184574		10,540.80
2916	US CELLULAR	R	5/10/2019			184575		1.05
7442	UNIFIED SCHOOL DISTRICT #250-C	R	5/10/2019			184576		10,668.94
7053	U.S. PEROXIDE, LLC	R	5/10/2019			184577		950.00
5589	VERIZON WIRELESS SERVICES, LLC	R	5/10/2019			184578		8,539.21
2350	WASTE CORPORATION OF MISSOURI	R	5/10/2019			184582		500.00
1108	WESTAR ENERGY	R	5/10/2019			184583		92,298.44
2876	A-PLUS CLEANERS & LAUNDRY	R	5/17/2019			184612		428.00
1	ALLEN, TRAVIS	R	5/17/2019			184613		25.00
1	BRILLIANCE PUBLISHING, INC	R	5/17/2019			184614		8.99
3516	CITY OF PITTSBURG	R	5/17/2019			184615		405.00
7657	COPY PRODUCTS, INC.	R	5/17/2019			184616		2,131.08
4263	COX COMMUNICATIONS KANSAS LLC	R	5/17/2019			184619		96.14
8074	DEHN DAVENPORT	R	5/17/2019			184620		200.00
1	DE LUNA, VANESSA	R	5/17/2019			184621		12.50
6088	EMERGENCY RESPONSE SOLUTIONS,	R	5/17/2019			184622		1,987.11
6740	FELD FIRE	R	5/17/2019			184623		939.00

VENDOR SET: 99 City of Pittsburg, KS
 BANK: 80144 BMO HARRIS BANK
 DATE RANGE: 5/08/2019 THRU 5/21/2019

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
4896	THE FORT SCOTT TRIBUNE	R	5/17/2019			184624		60.90
7995	HERITAGE TRACTOR INC	R	5/17/2019			184625		14.12
6923	HUGO'S INDUSTRIAL SUPPLY INC	R	5/17/2019			184626		183.20
2877	KDHE - BUREAU OF WATER	R	5/17/2019			184627		20.00
7190	LEXISNEXIS RISK DATA MANAGEMEN	R	5/17/2019			184628		381.92
7945	LUCKY-BUT LAWN CARE, LLC	R	5/17/2019			184629		40.00
8075	JOHN GARY MADISON	R	5/17/2019			184630		60.00
7804	MARTIN PROFESSIONAL, LLC	R	5/17/2019			184631		655.55
7938	ROSANO DEL PILAR MENDEZ	R	5/17/2019			184632		25.00
7601	MEYER LAW FIRM, LLC	R	5/17/2019			184633		620.00
6209	MYTOWN MEDIA	R	5/17/2019			184634		144.00
7151	TOTALFUNDS	R	5/17/2019			184635		500.00
8088	GREGORY L PRYOR	R	5/17/2019			184636		40.00
7000	JACOB REAGAN	R	5/17/2019			184637		192.93
0175	REGISTER OF DEEDS	R	5/17/2019			184638		123.00
0175	REGISTER OF DEEDS	R	5/17/2019			184639		123.00
7771	D & M RYAN, INC	R	5/17/2019			184640		58.00
8089	JORAN STOOT-MITCHELL	R	5/17/2019			184641		80.00
6260	TRANE	R	5/17/2019			184642		695.00
2335	UNITED STATES TREASURY	R	5/17/2019			184643		1,097.60
0093	US POST OFFICE	R	5/17/2019			184644		234.00
7881	LOGAN VANBECELAERE	R	5/17/2019			184645		120.00

VENDOR SET: 99 City of Pittsburg, KS
 BANK: 80144 BMO HARRIS BANK
 DATE RANGE: 5/08/2019 THRU 5/21/2019

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
2350	WASTE CORPORATION OF MISSOURI	R	5/17/2019			184646		51.19
5371	PITTSBURG FAMILY YMCA	R	5/17/2019			184647		404.96

* * T O T A L S * *

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	77	195,198.24	0.00	195,198.24
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	10	149,380.35	0.00	149,380.35
EFT:	91	299,361.32	0.00	299,361.32
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0	VOID DEBITS 0.00		
		VOID CREDITS 0.00	0.00	0.00

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 99 BANK: 80144 TOTALS:	178	643,939.91	0.00	643,939.91
BANK: 80144 TOTALS:	178	643,939.91	0.00	643,939.91
REPORT TOTALS:	178	643,939.91	0.00	643,939.91

Passed and approved this 28th day of May, 2019.

Patrick J. O'Bryan, Mayor

ATTEST:

Tammy Nagel, City Clerk



FINANCE AND ADMINISTRATION
201 West 4th Street · Pittsburg KS 66762

(620) 231-4100
www.pittks.org

Interoffice Memorandum

TO: Daron Hall, City Manager

FROM: Jamie Clarkson, Director of Finance

DATE: April 25, 2019

SUBJECT: Fiscal year 2018 audit report and acceptance of Comprehensive Annual Financial Report (CAFR)

Audrey Odermann of Mize Houser & Co., PA, will be attending the meeting to provide an overview and answer questions on the City's 2018 audit and CAFR.

cc: Tammy Nagel, City Clerk

ORDINANCE NO. S-1062

AN ORDINANCE AUTHORIZING THE CITY OF PITTSBURG, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (NORTHGATE PLAZA PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,180,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING, FURNISHING AND EQUIPPING A COMMERCIAL FACILITY, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE ISSUER TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

WHEREAS, the City of Pittsburg, Kansas, the “Issuer”), is authorized pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, purchase, construct, install, furnish and equip certain commercial and industrial facilities, and to issue industrial revenue bonds for the purpose of paying the cost of such facilities, and to lease such facilities to private persons, firms or corporations; and

WHEREAS, the governing body of the Issuer has heretofore and does now find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019 (the “Bonds”), in a principal amount not to exceed \$3,180,000, for the purpose of acquiring, purchasing, constructing, installing, furnishing and equipping a commercial project and related facilities for Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company (collectively, as tenants in common, the “Company”), including land, buildings, structures, improvements, fixtures, machinery and equipment to be located adjacent and to the east of North Broadway and south of East 29th Street in Pittsburg, Kansas (the “Project”); and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Indenture”), by and between the Issuer and Security Bank of Kansas City, as Trustee (the “Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement dated as of the date set forth therein (the “Base Lease Agreement”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project will be acquired, constructed, furnished and equipped and pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay the rental payments due under the Lease Agreement sufficient to pay the principal of and premium, if any, and interest on, the Bonds; and

WHEREAS, the governing body of the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of these bonds that the Issuer enter into certain agreements, and that the Issuer take certain other actions and approve the execution of certain other documents as herein provided;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS, AS FOLLOWS:

Section 1. Authorization for the Acquisition, Purchase, Construction, Installation, Furnishing and Equipping of the Project. The Issuer is hereby authorized to provide for the acquisition, purchase, construction, installation, furnishing and equipping of the Project, all in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized to issue and sell the Bonds in a principal amount not to exceed \$3,180,000 (the “Bonds”), for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing, furnishing and equipping the Project. The Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Bonds shall be payable solely out of the rents, revenues and receipts derived by the Issuer from the Project, and the Project and the net earnings derived by the Issuer from the Project shall be pledged and assigned to the Trustee as security for payment of the Bonds as provided in the Indenture.

Section 3. Authorization of Documents. The Issuer is hereby authorized to enter into the following documents, in substantially the forms presented to and reviewed by the governing body of the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the Clerk of the Issuer), with such changes therein as shall be approved by the officers of the Issuer executing such documents (the “Bond Documents”), such officers’ signatures thereon being conclusive evidence of their approval thereof:

- (a) Trust Indenture, between the Issuer and the Trustee;
- (b) Base Lease Agreement, between the Company and the Issuer;
- (c) Lease Agreement, between the Issuer and the Company; and
- (d) Bond Purchase Agreement dated the date set forth therein, among the Issuer, the Company and the Company, as Purchaser.

Section 4. Execution of Bond and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor (or, in the Mayor’s absence, the acting Mayor) of the Issuer is hereby authorized and directed to execute the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the Issuer. The Clerk of the Issuer is hereby authorized and directed to attest to and affix the seal of the Issuer to the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary.

Section 5. Pledge of the Project and Net Lease Rentals. The Issuer hereby pledges the Project and the net rentals generated under the Lease Agreement to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Bonds are paid or deemed to have been paid under the Indenture

Section 6. Further Authority. The Issuer shall, and the officers, employees and agents of the Issuer and the Issuer's Bond Counsel, Gilmore & Bell, P.C. are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Bond Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in force from and after its passage by the governing body, approval by the Mayor and publication of the Ordinance or a summary thereof in the official Issuer newspaper.

PASSED by the governing body of the City of Pittsburg, Kansas on May 28, 2019 and **APPROVED AND SIGNED** by the Mayor.

Mayor

[SEAL]

ATTEST:

City Clerk

(Published in *The Morning Sun* on June 2, 2019)

SUMMARY OF ORDINANCE NO. S-1062

On May 28, 2019, the governing body of the City of Pittsburg, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF PITTSBURG, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (NORTHGATE PLAZA PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,180,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING, FURNISHING AND EQUIPPING A COMMERCIAL FACILITY, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE ISSUER TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

The Bonds approved by the Ordinance are being issued in the maximum principal amount of \$3,180,000, for the purpose of acquiring, constructing, furnishing and equipping a commercial facility for Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company, as tenants in common, and constitute limited obligations of the City payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Trustee and in favor of the owners of the Series 2019 Bonds, as provided in the Indenture. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 201 West 4th Street, Pittsburg, Kansas. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.pittks.org.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: May 28, 2019.

City Attorney

CITY OF PITTSBURG, KANSAS

AND

**SECURITY BANK OF KANSAS CITY
As Trustee**

—————
TRUST INDENTURE

Dated as of June 1, 2019
—————

Relating to:

**\$3,180,000
(Aggregate Maximum Principal Amount)
City of Pittsburg, Kansas
Taxable Industrial Revenue Bonds
(Northgate Plaza Project)
Series 2019**

TRUST INDENTURE

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Exhibit A – Form of Bond

TRUST INDENTURE

THIS TRUST INDENTURE dated as of June 1, 2019 (the **“Indenture”**), between the **CITY OF PITTSBURG, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the **“Issuer”**), and **SECURITY BANK OF KANSAS CITY**, a state banking corporation duly organized and existing under the laws of the Kansas and authorized to accept and execute trusts of the character herein set forth under the laws of the Kansas, with its principal corporate trust office located in the city of Kansas City, Kansas, as Trustee (the **“Trustee”**);

WITNESSETH:

WHEREAS, the Issuer is authorized under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the **“Act”**), to purchase, acquire, construct, improve, equip and remodel certain facilities within its jurisdiction for commercial purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities, and to pledge the income and revenues to be derived from the operation of such facilities to secure the payment of the principal of and interest on such bonds;

WHEREAS, pursuant to the Act, the governing body of the Issuer adopted a Resolution on March 19, 2019 (the **“Resolution”**), expressing the intent of the Issuer to issue its industrial revenue bonds in an amount not to exceed \$3,180,000 for a commercial project for Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company (collectively, the **“Company”**);

WHEREAS, pursuant to the Act, the governing body of the Issuer has passed Ordinance No. [_____] (the **“Ordinance”**) on May [___], 2019, authorizing the Issuer to issue its Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019, in the maximum principal amount of \$3,180,000 (the **“Bonds”**), for the purpose of acquiring real property and acquiring, constructing, installing, furnishing, and equipping a commercial facility, including land, buildings, structures, improvements, fixtures, furnishings, machinery and equipment and all rights-of-way and appurtenances necessary and convenient therefor as hereinafter more fully described (the **“Project”**), and authorizing the Issuer to lease the Project to the Company;

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement of even date herewith (the **“Base Lease Agreement”**) between the Company and the Issuer;

WHEREAS, the Issuer will lease the Project to the Company pursuant to the Lease Agreement of even date herewith (the **“Lease Agreement”**) between the Issuer and the Company; and

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

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns forever (subject to the proviso set forth in the following paragraph), the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the “**Trust Estate**”), to-wit:

(a) All right, title and interest of the Issuer in, to and under the Base Lease Agreement and the Project together with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining;

(b) All right, title and interest of the Issuer in, to and under the Lease Agreement, and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all rentals and other amounts to be received by the Issuer and paid by the Company under and pursuant to and subject to the provisions of the Lease Agreement; and

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

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

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

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

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to

the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds or coupons, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in **Section 1.1** of the Lease Agreement, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Additional Bonds” means any Bonds issued pursuant to **Section 209** of this Indenture.

“Act” means K.S.A. 12-1740 to 12-1749d, inclusive, as amended.

“Authorized Issuer Representative” means the Mayor, City Manager, Finance Director, City Clerk or such other person at the time designated to act on behalf of the Issuer as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its Mayor. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized Issuer Representative.

“Authorized Company Representative” means the person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Company by authorized officers. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized Company Representative.

“Base Lease Agreement ” means the Base Lease Agreement dated as of June 1, 2019, between the Company, as lessor and, the Issuer, as lessee, and as from time to time amended and supplemented in accordance with the Base Lease Agreement.

“Bond” or **“Bonds”** means the Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019, in the maximum principal amount of \$3,180,000, issued pursuant to **Section 208** of this Indenture and Additional Bonds, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means “City of Pittsburg, Kansas, Taxable Industrial Revenue Bond Fund –Northgate Plaza Project, Series 2019” created in **Section 601** of this Indenture.

“Bondowner” or **“Registered Owner”** means the registered owner of any Bond, as recorded in the books maintained by the Trustee for registration and transfer of the Bonds.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds by and between the Issuer and the purchaser identified therein.

“Business Day” shall mean a day which is not (a) a Saturday, Sunday or any other day on which banking institutions in New York, New York, or the Issuer or cities in which the principal payment or other

designated corporate office of the Trustee is located are required or authorized to close or (b) a day on which the New York Stock Exchange is closed.

“**Company**” means jointly and severally Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company, and any successors or assigns.

“**Completion Date**” means the date of execution of the certificate required pursuant to **Section 504** hereof.

“**Cumulative Outstanding Principal Amount**” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease Agreement, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond in **Section 401** hereof, less any amount redeemed pursuant to **Article III** hereof.

“**Event of Default**” means any Event of Default as defined in **Section 901** hereof.

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

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

“**Interest Payment Date**” means each July 1, commencing July 1, 2020.

“**Investment Securities**” means any of the following securities:

(a) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies set forth in clause (b) below to the extent they are unconditionally guaranteed by the United States of America;

(b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Association;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any financial institution organized under the laws of any state of the United States of America or under the laws of the United States of America (including the Trustee), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal

to the principal amount of such certificates of deposit and shall be lodged with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) Shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, whose only assets are obligations described in (a) above, and which shares, at the time of purchase, are rated by Standard & Poor's and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature;

(f) Any other investment approved in writing by the Owner of the Bonds.

“Issuer” means the City of Pittsburg, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, and its successors and assigns.

“Lease Agreement” means the Lease Agreement dated as of June 1, 2019, between the Issuer, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

“Maturity Date” means July 1, 2021.

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

(a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

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

“Owner” shall have the same meaning as Bondowner.

“Paying Agent” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Project” means the project referred to in the recitals of this Indenture, including the Project Site, the Project Improvements and the Project Equipment, and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease Agreement as they may at any time exist.

“**Project Costs**” means all costs of acquisition, purchase, construction, improvement, furnishing, equipping and remodeling of the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site and any Project Improvements and Project Equipment located thereon at the execution of the Lease Agreement and which the Company conveys to the Issuer;

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

(c) all costs and expenses of every nature incurred in acquisition, purchase, construction, improvement and remodeling the Project Improvements and otherwise improving the Project Site and purchasing and installing the Project Equipment, including the actual cost of labor, materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the acquisition, purchase, construction, improvement, equipping and remodeling of the Project;

(d) interest accruing on the Bonds during the period of the acquisition, purchase, construction, improvement, equipping and remodeling of the Project;

(e) the cost of the title insurance policies and the cost of any insurance maintained during the construction period in accordance with **Article VII** of the Lease Agreement, respectively;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, underwriting expenses, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the acquisition, purchase, construction, improvement, equipping and remodeling of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds; (2) the acquisition, purchase, construction, improvement, equipping and remodeling of the Project; and (3) the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease Agreement;

provided, the Project Costs shall include: (i) costs and expenses relating to architectural and engineering services for the Project constitute Project Costs within the meaning of this definition regardless of the date such costs were paid to the extent such costs are properly capitalizable in accordance with generally accepted accounting principles, and (ii) costs and expenses necessary or incidental to the acquisition by the Issuer of the Project Site constitute Project Costs within the meaning of this definition regardless of the date such costs were paid.

“Project Fund” means “City of Pittsburg, Kansas, Project Fund – Northgate Plaza Project, Series 2019” created in **Section 501** of this Indenture.

“Refunding Bonds” shall have the meaning set forth in **Section 209** hereof.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the Issuer and the Trustee pursuant to **Article XI** hereof.

“Supplemental Lease” means any supplement or amendment to the Lease Agreement entered into pursuant to **Article XII** hereof.

“Transaction Documents” means this Indenture, the Bonds, the Base Lease Agreement, the Lease Agreement, the Bond Purchase Agreement, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing; provided, however, that when the words “Transaction Documents” are used in the context of the authorization, execution, delivery, approval or performance of Transaction Documents by a particular party, the same shall mean only those Transaction Documents that provide for or contemplate authorization, execution, delivery and approval by such party.

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

“Trustee” means Security Bank of Kansas City, a state banking corporation duly organized and existing under the laws of the State of Kansas, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

Section 102. Rules of Interpretation.

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

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

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

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

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Pittsburg, Kansas Taxable Industrial Revenue Bond (Northgate Plaza Project), Series 2019” with such other appropriate particular designation added to or incorporated in such title for the Bonds of any particular series of Additional Bonds as the Issuer may determine. The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$3,180,000, plus the principal amount of any Additional Bonds.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the Issuer payable solely out of the rents, revenues and receipts derived by the Issuer from the Project and not from any other fund or source of the Issuer, and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners of the Bonds, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the Issuer or the State of Kansas, and neither the Issuer nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of Bonds.

(a) The Bonds shall be issuable in the form of one fully registered Bond without coupons in the minimum denomination of \$100,000 and any multiple of \$0.01 in excess thereof up to \$3,180,000. The Bond shall be substantially in the form hereinafter set forth in **Article IV** of this Indenture.

(b) The Bond of each series will be numbered from 1 upward, and shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bond is at any time thereafter transferred, any Bond replacing such Bond shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bond.

(a) The principal of and interest on the Bond shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bond shall be made upon the presentation and surrender of such Bond at the principal payment office of any Paying Agent named in the Bond; **provided**, that so long as the Company is the sole Bondowner, the Trustee shall make payments of principal on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States; **provided, further**, that upon any payment by internal bank transfer or by wire transfer of principal on such Bond, the Trustee shall record the amount of such principal payment on the registration books for the Bonds maintained by the Trustee on behalf of the Issuer. If the Bond is presented to the Trustee together with such payment, the Trustee may enter the amount of such principal payment on the Table of Cumulative Outstanding Principal Amount on the Bond. Notwithstanding the foregoing, the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount on the Bond at any time, and the Bondowner is not required to present the Bond for action by the Trustee, as bond registrar, with each payment of principal on the Bond.

Payment of the interest on the Bond shall be made by the Trustee on each Interest Payment Date to the person appearing on the registration books of the Issuer hereinafter provided for as the Registered Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date by check or draft mailed to such Registered Owner at such Owner's address as it appears on such registration books.

In the event that the Company is the sole Bondowner, the Trustee is authorized to make interest payments on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States. In addition, at the written request of any Registered Owner of Bonds in the aggregate principal amount of at least **\$500,000**, the principal and interest on this Bond shall be paid by electronic transfer to such Owner upon written notice to the Trustee from such Owner containing the electronic transfer instructions to which such owner wishes to have such transfer directed and such written notice is given by such owner to the Trustee not less than the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date. Any such written notice for electronic transfer shall be signed by such Owner and shall include the name of the bank (which shall be in the continental United States), its address, its ABA routing number and the name, number and contact name related to such Owner's account at such bank to which the payment is to be credited.

In addition, as provided in the Lease Agreement, the Bond may be paid or deemed paid in such other manner as provided by the Trustee.

In the event the Company is the sole Bondowner on the Maturity Date, then the Company may set-off its obligation to the Issuer as lessee under the Lease Agreement against the Issuer's obligations to the Company as the Bondowner under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the Maturity Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company per the Lease Agreement in an amount equal to the remaining principal on the Bonds so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

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

(b) The Bond shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit A** hereto, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes unless and until such Certificate of Authentication shall have been duly executed by the Trustee. Such executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

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

(b) The Bond may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or such owner's attorney or legal representative, in such form as shall be satisfactory to the Trustee. The Bond has not been registered under the Securities Act of 1933, as amended, or any state securities law, and the Bond may not be transferred unless (i) the Issuer consents in writing to such transfer, and (ii) and the Issuer and the Trustee are furnished a written legal opinion from counsel acceptable to the Trustee, the Issuer and the Company, to the effect that such transfer is exempt from the registration requirements of the Securities Act of 1933, as amended, and any applicable state securities law; provided that, notwithstanding the foregoing, the collateral assignment of the Bonds to the holder of the Mortgage (as defined in the Lease) shall be permitted. The Bond may be transferred to any successor to the Company or any entity owned or under common ownership with the Company, as Lessee under the Lease Agreement without the necessity of obtaining the Issuer's consent or such an opinion. In connection with any such transfer of the Bond the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form attached hereto as **Exhibit B**. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

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

(d) The Issuer and the Trustee consent to the Mortgage and the pledge of the Bond to any Mortgagee thereunder.

In the event any Registered Owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code, such amount may be deducted by the Trustee from amounts otherwise payable to such Registered Owner hereunder or under the Bonds.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the person in whose name the same shall be registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Registered Owner

thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) There shall be issued and secured by this Indenture a series of Bonds in the aggregate maximum principal amount of \$3,180,000 for the purpose of providing funds for paying the costs of the Project, which Bonds shall be designated “City of Pittsburg, Kansas Taxable Industrial Revenue Bond (Northgate Plaza Project), Series 2019.” The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **July 1, 2021** (subject to prior redemption as hereinafter provided in **Article III**) and shall bear interest as specified in **Section 208(e)** hereof, payable on the dates specified in **Section 208(e)** hereof.

(b) The Trustee is hereby designated as the Issuer’s Paying Agent for the payment of the principal of and interest on the Bonds.

(c) The Bond shall be executed without material variance from the form and in manner set forth in **Article IV** hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bond by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of Ordinance passed by the governing body of the Issuer authorizing the issuance of the Bonds and the execution of this Indenture and the Lease Agreement;

(2) An original executed counterpart of this Indenture;

(3) Original executed counterparts of the Base Lease Agreement, the Lease Agreement, and the Bond Purchase Agreement;

(4) A request and authorization to the Trustee on behalf of the Issuer, executed by the Authorized Issuer Representative, to authenticate the Bond and deliver the same to the purchaser identified in the Bond Purchase Agreement upon payment to the Trustee, for the account of the Issuer, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the Issuer;

(6) An opinion of counsel to the Company to the effect that the Base Lease, Lease Agreement, and Bond Purchase Agreement constitute enforceable and binding obligations of the Company; and

(7) Evidence of insurance coverage as required by **Article VII** of the Lease Agreement.

(d) When the documents specified in subsection (c) of this Section shall have been filed with the Trustee, and when the Bond shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Bond to or upon the order of the purchaser thereof, but only upon payment to the Trustee of the purchase price of the Bond, as specified in the Bond Purchase Agreement. The proceeds of the

sale of the Bonds shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in **Article V** hereof.

(e) The Series 2019 Bond shall bear interest at the rate of **2.00%** per annum on the Cumulative Outstanding Principal Amount of the Bond, and such interest shall be payable in arrears on each Interest Payment Date, and continuing thereafter until the said Cumulative Outstanding Principal Amount is paid in full. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each. Principal shall be payable at maturity unless redeemed prior to said date in accordance with **Article III**.

Section 209. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Bonds, and any other Additional Bonds which remain Outstanding after the issuance of such Additional Bonds, at any time or from time to time, upon compliance with the conditions hereinafter provided in this Section, for the purpose of providing funds for (i) refunding all or part of the Bonds then Outstanding of any series, including the payment of any premium thereon and interest to accrue to the designated redemption dated and any expenses in connection with such refunding, (ii) to provide funds to pay the costs of completing the Project, (iii) to provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of damage, destruction or condemnation thereto or thereof, and (iv) to provide funds to pay all or any part of the costs of acquisition, purchase, construction, improvement, furnishing, equipping and remodeling to the Project as the Company may deem necessary or desirable. Additional Bonds issued for purposes described in clause (i) above shall also be referred to as “Refunding Bonds.”

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Issuer shall (i) pass an ordinance authorizing the issuance of such Additional Bonds, fixing the amount thereof and describing the Bonds to be refunded, authorizing the Issuer to enter into a Supplemental Indenture for the purpose of issuing such Additional Bonds and, if required, authorizing the Issuer to enter into a Supplemental Lease with the Company, and (ii) except in the case of Refunding Bonds, for which consent shall not be required, obtain the written consent to the issuance of the proposed Additional Bonds from the Owners of 100% of the Bonds Outstanding as reflected on the bond registration books maintained by the Trustee immediately preceding the issuance of such Additional Bonds.

(c) Such Additional Bonds shall be dated, shall be stated to mature in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices, all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemptions, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Bonds, and any other Additional Bonds which remain Outstanding after the issuance of such Additional Bonds.

(d) Except as provided in this Section, the Issuer will not otherwise issue any obligations on a parity with the Bonds, but the Issuer may, at the written request of the Company, issue other obligations specifically subordinate and junior to the Bonds, without the written consent of all or any of the Owners.

(e) Such Additional Bonds shall be executed in the manner set forth in **Section 205** hereof and shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Additional Bonds by the Trustee, and as a condition precedent thereto, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the Issuer authorizing the issuance of such Additional Bonds and the execution of the Supplemental Indenture, Supplemental Lease, and supplements to any other documents as may be necessary;

(2) Original executed counterparts of the Supplemental Indenture and the Supplemental Lease;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit B** hereto;

(4) A request and authorization to the Trustee on behalf of the Issuer, executed by the Authorized Issuer Representative, to authenticate the Additional Bonds and deliver the same to the Purchaser upon payment, for the account of the Issuer, of the purchase price thereof specified in the bond purchase agreement executed in connection with the purchase of the Additional Bonds. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Additional Bonds constitute valid and legally binding special obligations of the Issuer; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Additional Bonds.

When the documents specified in this subsection have been filed with the Trustee, and when the Additional Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the purchase price to the Trustee, and the Trustee shall endorse the Additional Bonds in an amount equal to the purchase price and then either hold the Additional Bonds in trust or is so directed in writing deliver the Additional Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with the Lease in an amount equal to the purchase price of the Additional Bonds, and the Trustee shall authenticate and endorse the Additional Bonds in an amount equal to the purchase price and pursuant to **Section 208(c)** hereof either hold the Additional Bonds in trust for the Purchaser or if so directed in writing deliver the Bonds to the Purchaser (or another purchaser or assignee designated by the Purchaser).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited an amount equal or up to the purchase price of any Additional Bonds.

(f) When the documents specified above have been filed with the Trustee, and when such Additional Bonds have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the Purchaser thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee as provided in **Article V** hereof and in the Supplemental Indenture authorizing the issuance of such

Additional Bonds. The proceeds of all Additional Bonds issued to refund Outstanding Bonds (excluding accrued interest and premium, if any, which shall be deposited in a separate account in the Bond Fund) shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the principal of, premium, if any, and interest on the Bonds to be refunded, as provided herein and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

Section 210. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 211. Cancellation and Destruction of Bonds Upon Payment.

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

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate in triplicate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the Issuer and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds Generally. The Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions set forth in this Article. Additional Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds.

Section 302. Redemption of Bonds. The Bonds shall be subject to redemption and payment in whole or in part, as follows:

(a) At any time prior to the stated maturity thereof, by the Issuer, at the option of and upon instructions from the Company, at a price equal to the par value thereof, plus accrued interest thereon, without premium or penalty, to the date of payment.

(b) At any time prior to the stated maturity thereof, to the extent amounts are deposited into the Bond Fund in accordance with **Section 602** hereof, at a price equal to the par value thereof, plus accrued interest thereon, without premium or penalty, to the date of payment.

Section 303. Effect of Call for Redemption. Prior to or on the date fixed for redemption, funds or non-callable Government Securities shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

Section 304. Notice of Redemption. In the event the Bonds are to be called for redemption as provided in **Section 302(a) or (b)** hereof, the Company shall deliver written notice to the Issuer and the Trustee that it has elected to redeem all or a portion of the Bonds in accordance with **Section 302(a) or (b)** hereof at least ten days prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owner at least five days prior to the scheduled redemption date by first class mail stating the date upon which the Bonds will be redeemed and paid.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bond and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit A** attached hereto. Additional Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be in substantially the form set forth in this Article, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture or any Supplemental Indenture. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Project Fund. There is hereby created and ordered to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "City of Pittsburg, Kansas, Project Fund – Northgate Plaza Project, Series 2019" (herein called the "**Project Fund**").

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bond, including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 602** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of acquisition, purchasing, construction, improving, furnishing, equipping or remodeling of the Project shall also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of

Article IV of the Lease Agreement, and the Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions. All disbursements from the Project Fund which are payable to the Company shall be made by internal bank transfer or wire transfer as designated by the Company in writing to the Trustee. The Trustee shall disburse moneys in the Project Fund in each case within two (2) Business Days after receipt by the Trustee of an executed written requisition certificate. The Trustee shall notify the Registered Owner of the Bonds by telephone when the Trustee is prepared to disburse moneys pursuant to any requisition certificate. Any moneys received by the Trustee by 11:00 a.m. for deposit in the Project Fund for which the Trustee has received a requisition certificate shall be disbursed from the Project Fund on the same Business Day.

(b) In paying any requisition under this Section, the Trustee may rely conclusively as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative of Northgate Associates LLC, without inquiry or investigation. It is understood that the Trustee shall not be required to make any inspections of the Project, nor any improvements with respect thereto, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise the Project. The approval of each requisition certificate by the Authorized Company Representative of Northgate Associates LLC shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed. If the Issuer so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer.

(c) If required, the Issuer covenants and agrees to take all necessary and appropriate action promptly in approving and ordering all such disbursements. The Trustee is hereby authorized and directed to issue checks for each disbursement in the manner and as provided for by the aforesaid provisions of the Lease Agreement.

(d) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and shall provide a statement of receipts and disbursements with respect thereto to the Company on a monthly basis. After the Project has been completed and a certificate of payment of all costs filed as provided in **Section 504** hereof, the Trustee shall file a final statement of receipts and disbursements with respect thereto with the Issuer and the Company.

Section 504. Completion of the Project. The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease Agreement. As soon as practicable any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund.

Section 505. Disposition Upon Acceleration. If the principal of the Bonds shall have become due and payable pursuant to **Section 902** of this Indenture, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX** provided, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee with advice to the Issuer and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Creation of the Bond Fund. There is hereby created and ordered established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the “City of Pittsburg, Kansas, Taxable Industrial Revenue Bond Fund – Northgate Plaza Project, Series 2019” (herein called the “**Bond Fund**”).

Section 602. Deposits Into the Bond Fund. The Trustee shall deposit into the Bond Fund, as and when received, (a) all accrued interest on the Bonds paid by the purchaser of the Bonds; (b) all rent payments payable by the Company to the Issuer specified in **Section 5.1** of the Lease Agreement and amounts due under **Section 5.2** of the Lease Agreement; (c) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 505** hereof upon acceleration of the Bonds; (d) the balance of any Net Proceeds (as defined in the Lease Agreement) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease Agreement; (e) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (f) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease Agreement when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Bond Fund, including, without limitation, amounts payable into the Bond Fund by the Issuer pursuant to **Section 801** hereof.

Section 603. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 606** and **Section 908** hereof or in **Section 4.6(a)** of the Lease Agreement, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof prior to maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease Agreement and deposited to the Bond Fund as provided in **Section 602** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the Issuer.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon prior to such redemption, the Issuer covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease Agreement and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been represented for payment.

Section 604. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds shall be a Saturday, a Sunday or a legal holiday or a day on which banking institutions in the Issuer of payment are authorized by law to close, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day not a Saturday, a Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 605. Nonpresentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond shall not be presented for payment within four years following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall repay to the Company the funds theretofore held by it for payment of such Bond, without liability for interest thereon, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 606. Repayment to the Company from the Bond Fund. After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the Issuer and any Paying Agent and any other amounts required to be paid under this Indenture and the Lease Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease Agreement.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

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

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the owner prior to the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond

Fund, the Trustee is authorized to invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption prior to the date such funds will be needed. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** of this Indenture of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Interest Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

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

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease Agreement promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use its best efforts to cause the Project to be continuously and sufficiently leased as a revenue and income-providing undertaking, and that, should there be a default under the Lease Agreement with the result that the right of possession of the Project is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Bondowners to the end of fully protecting the rights and security of the Bondowners and shall diligently proceed in good faith and use its best efforts to secure another tenant for the Project to the end that at all times sufficient rents, revenues and receipts will be derived from the Project promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Kansas to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof.

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

it deems appropriate to enforce all such covenants, undertaking, stipulations and provisions of the Issuer hereunder.

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

Section 805. Payment of Taxes and Charges. The Issuer represents that pursuant to the provisions of **Section 5.2** of the Lease Agreement, the Company has agreed to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof.

Section 806. Insurance. The Issuer represents that pursuant to the provisions of **Article VII** of the Lease Agreement, the Company has agreed at its own expense to keep the Project constantly insured to the extent provided for therein.

Section 807. Maintenance and Repair. The Issuer represents that pursuant to the provisions of **Section 6.1** of the Lease Agreement, the Company has agreed at its own expense to cause the Project to be maintained and kept in good condition, repair and working order, and that pursuant to **Section 8.3** of the Lease Agreement the Company may, at its own expense, make from time to time additions, changes and alterations to the Project under the terms and conditions set forth therein.

Section 808. Recordings and Filings. The Issuer will cause this Indenture and all Supplemental Indentures, the Lease Agreement and all Supplemental Leases and all appropriate financing statements and other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners of the Bonds and the rights of the Trustee hereunder. The Trustee shall file UCC continuation statements, as needed.

Section 809. Inspection of Project Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 810. Enforcement of Rights Under the Lease Agreement. The Issuer covenants and agrees that it shall enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease Agreement to the extent necessary to preserve the Project in good order and repair, and to protect the rights of the Trustee and the Bondowners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease Agreement. The Issuer agrees that the Trustee, as assignee of the rentals and other amounts to be received by the Issuer and paid by the Company under the Lease Agreement, or in its name or in the name of the Issuer, may enforce all rights of the Issuer to receive such rentals and other amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease Agreement for and on behalf of the Bondowners, whether or not the Issuer is in default hereunder.

Section 811. Subordination of Indenture to the Lease Agreement. This Indenture and the rights and privileges hereunder of the Trustee and the Owners of the Bonds are specifically made subject and subordinate to the rights and privileges of the Company (as long as no default by the Company under the Lease Agreement is continuing beyond any applicable grace period) and of any Mortgagee set forth in the Lease Agreement. So long as not otherwise provided in this Indenture, the Company shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease Agreement. Nothing contained in this Section shall be interpreted as eliminating, modifying or affecting in any manner the rights, privileges or immunities granted to the Trustee in **Article X** hereof.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at the date fixed for redemption thereof for a period of 10 days following written notice to the Issuer and the Company by the Trustee or by the Owners of 25% in aggregate principal amount of the Bonds Outstanding;

(b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at the date fixed for redemption thereof for a period of 10 days following written notice to the Issuer and the Company by the Trustee or by the Owners of 25% in aggregate principal amount of the Bonds Outstanding; or

(c) The occurrence of an Event of Default as specified in **Section 12.1** of the Lease Agreement shall have occurred.

Section 902. Acceleration of Maturity in Event of Default. If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the Issuer and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default shall have occurred and be continuing, the Issuer, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the Issuer pertaining thereto, and including the rights and the position of the Issuer under the Lease Agreement, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements as shall be deemed wise by the Trustee; the Trustee may lease the Project or any part thereof, in the name and for account of the Issuer, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, his agents and counsel, and (b) any reasonable charges of the Trustee hereunder, and (c) any taxes and assessments and other charges

prior to the lien of this Indenture, which the Trustee may deem it wise to pay, and (d) all expenses of such repairs and improvements, and the Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds shall have been paid and all defaults made good, the Trustee shall surrender possession of the Trust Estate to the Issuer, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the Issuer and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default shall have occurred and be continuing, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondowners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) If an Event of Default shall have occurred and be continuing, and if requested to do so by the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondowners.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds and coupons.

Section 906. Limitation on Exercise of Remedies by Bondowners. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in subsection (h) of **Section 1001** or of which by said subsection the Trustee is deemed to have notice, (b) such default shall have become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and shall have offered to the Trustee indemnity as provided in subsection (l) of **Section 1001**, and (d) the Trustee shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this

Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondowner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Bondowners to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)** hereof; and, provided further, that the Trustee shall have the right to decline to follow any such directions if the Trustee shall in good faith determine that the proceedings so directed would involve the Trustee in personal liability.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the person entitled thereto, without any discrimination or privilege;

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the Issuer and the Paying Agent have been paid, any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 606** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Company, the Trustee and the Bondowners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and shall do so upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable fees, charges, costs and expenses of the Trustee and the Issuer, in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Company, the Trustee and the Bondowners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default shall have occurred and be continuing, subject to **Section 1001(1)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care, and the Trustee shall be entitled to act upon and may conclusively rely upon the opinion or advice of counsel, who may be counsel to the Issuer or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel.

(c) Except as provided in the Lease Agreement and particularly **Section 10.8** thereof, the Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith, or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee.

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

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized Issuer Representative or Authorized Company Representative as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

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

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee shall be specifically notified in writing of such default or Event of Default by the Issuer or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the Project, and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

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

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

(l) Before taking any action under this Indenture, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and

indemnification to the Trustee shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) The Trustee may elect not to proceed in accordance with the directions of the Bondowners without incurring any liability to the Bondowners if, in the opinion of the Trustee, such direction may result in environmental or other liability to the Trustee, in its individual capacity, for which the Trustee has not received indemnity pursuant to this section from the Bondowners, and the Trustee may rely conclusively upon an opinion of counsel in determining whether any action directed by the Bondowners may result in such liability.

(o) The Trustee may inform the Bondowners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not received indemnity pursuant to this section.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease Agreement, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the Issuer shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease Agreement. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a first lien with right of payment prior to payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

Section 1003. Notice to Bondowners if Default Occurs. If an Event of Default occurs of which the Trustee is by subsection (h) of **Section 1001** hereof required to take notice or if notice of an Event of Default be given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** to be kept at the principal office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of Bondowners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted

or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the Issuer, the Company and the Bondowners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Bondowners or by the Issuer.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding.

Section 1008. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or shall otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee reasonably acceptable to the Issuer and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the Issuer, by an instrument executed and signed by its Mayor and attested by its Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondowners in the manner above provided. Any such temporary Trustee so appointed by the Issuer shall hold such appointment no longer than 90 days without Company approval and shall immediately and without further acts be superseded by the successor Trustee so appointed by such Bondowners. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust having a reported capital, surplus and undivided profits of not less than **\$500,000**. Should no temporary or successor Trustee be appointed within thirty days following the date of the instrument of resignation or removal, any Bondowner or the resigning or removed Trustee may petition a court of competent jurisdiction for the appointment of a successor.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor, and thereupon the obligations and duties of the predecessor Trustee hereunder shall cease and terminate. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease Agreement, the Trustee may pay such tax, assessment or governmental

charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Bondowners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the prime rate of the Trustee, plus 2%, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State of Kansas) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease Agreement, and in particular in case of the enforcement of either on default or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Annual Accounting. The Trustee shall render an annual accounting to the Issuer, the Company and to any Bondowner requesting the same and, upon the request of the Company or the Bondowner, a monthly accounting to the Company and the Bondowner, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Bondowners. The Issuer and the Trustee may from time to time, without the consent of or notice to any of the Bondowners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change not prejudicial to the Bondowners (in making such determination, the Trustee may rely conclusively upon an opinion of counsel);
- (b) To grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;
- (c) To more precisely identify the Project or to substitute or add additional property thereto;
- (d) To subject to this Indenture additional revenues, properties or collateral; or
- (e) To issue Refunding Bonds as provided in **Section 209** hereof.

Section 1102. Supplemental Indentures Requiring Consent of Bondowners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than 50% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer and the Trustee for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the Issuer shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Bondowner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Bondowners. If within 60 days or such longer period as may be prescribed by the Issuer following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question

the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of a Supplemental Lease executed by the Company in connection with the issuance of Additional Bonds under **Section 209** hereof shall be deemed to be the consent of the Company to the execution of a Supplemental Indenture pursuant to **Section 209** hereof, respectively. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture (other than a Supplemental Indenture proposed to be executed and delivered pursuant to **Section 209** hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Section 1104. Opinion of Counsel. Prior to or contemporaneously with the execution of any Supplemental Indenture by the Trustee, the Trustee shall receive an opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the provisions of such Supplemental Indenture are authorized under this Indenture and the Act and will, upon execution and delivery thereof be valid and binding upon the Issuer in accordance with its terms.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Bondowners. The Issuer and the Trustee shall, without the consent of or notice to the Bondowners, consent to the execution of any Supplemental Lease or Supplemental Leases by the Issuer and the Company as may be required (a) by the provisions of the Lease Agreement and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease Agreement, (c) so as to more precisely identify the Project or substitute or add additional property thereto, (d) in connection with the issuance of Refunding Bonds under **Section 209** hereof, (e) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondowners (in making such determination, the Trustee may rely upon an opinion of counsel).

Section 1202. Supplemental Leases Requiring Consent of Bondowners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the Issuer nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the Issuer or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than 50% in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the Issuer and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the principal office of the Trustee for inspection by all Bondowners. The Trustee shall not be obligated to consent to any Supplemental Lease which, in the judgment of the Trustee, is prejudicial to the rights of the Trustee.

Section 1203. Opinions of Counsel. Prior to or contemporaneously with the consent by the Trustee of execution of any Supplemental Lease, the Trustee shall receive an opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the provisions of such Supplemental Lease are authorized under this Indenture, the Lease Agreement and the Act and will, upon execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and an opinion of counsel to the Company stating that such Supplemental Lease will, upon execution and delivery thereof, be valid and binding upon the Company.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds shall have been paid or satisfied in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision shall also be made for paying all other sums payable hereunder, including the reasonable fees and expenses of the Trustee, the Issuer and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be reasonably requested to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 606** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds or coupons then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), (1) shall have been made or caused to be made in accordance with the terms thereof, (2) shall have been provided for by depositing with the Trustee in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, and, in the case of Bonds which do not mature or will not be redeemed within ninety days of the deposit of cash or non-callable Government Securities, a verification report of a firm of independent certified public accountants as to the adequacy of the amounts so deposited to fully pay the Bonds deemed to be paid, or (3) if the Company is the sole Owner, shall have been satisfied by surrender of the Bonds to the Trustee by the Owner. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

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

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Bondowners.

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

(1) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgements within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company or any affiliate of the Company, unless the Company or such affiliate own 100% of the Bonds Outstanding, shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company; for the purposes of this definition, "control" means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be

disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company or any affiliate of the Company.

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

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the Issuer, the Trustee, the Company or Bondowners if the same shall be duly mailed by registered or certified mail, postage prepaid, return receipt requested, (provided that notice to the Trustee shall in no case be deemed effective until received) addressed:

(a) To the Issuer:

City of Pittsburg, Kansas
City Manager
201 West 4th Street
Pittsburg, Kansas 66762

(b) To the Company:

Northgate Associates LLC
Attn: Stephen J. Block
c/o Block Real Estate Services, LLC
700 West 47th Street, Suite 200
Kansas City, Missouri 64112

And

GM-Northgate LLC
Attn: Gene C. Malone, Jr.
26371 West Cedar Niles Circle
Olathe, Kansas 66061

And

HOK-Northgate LLC
Attn: Ed Hokanson
PO Box 1945
Grand Junction, CO 81502

With a copy to:

Polsinelli PC
6201 College Blvd., Suite 500
Overland Park, Kansas 66211

Attention: Bob Johnson

(c) To the Trustee:

Security Bank of Kansas City
701 Minnesota Avenue
Kansas City, Kansas 66101
Attention: Corporate Trust Department

(d) To the Bondowners if the same shall be duly mailed by first-class mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the principal corporate trust office of the Trustee.

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 1407. Electronic Transactions. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

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IN WITNESS WHEREOF, the City of Pittsburg, Kansas, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the Issuer to be hereunto affixed and attested by its Clerk, and to evidence its acceptance of the trusts hereby created, Security Bank of Kansas City has caused this Indenture to be signed in its name and behalf by its duly authorized officer and its official seal to be hereunto affixed and attested by its Clerk, all as of the date first above written.

CITY OF PITTSBURG, KANSAS

By _____
Mayor

[SEAL]

ATTEST:

By _____
City Clerk

SECURITY BANK OF KANSAS CITY
as Trustee

By _____
Name:
Title:

[SEAL]

EXHIBIT A FORM OF BOND

This Bond has not been registered under the Securities Act of 1933, as amended, or any state securities laws, and this Bond may not be transferred unless (i) the Issuer consents in writing to such transfer, and (ii) the Issuer and the Trustee are furnished a written legal opinion from counsel acceptable to the Issuer, the Trustee and the Company, to the effect that such transfer is exempt from the registration requirements of the Securities Act of 1933, as amended, and any applicable state securities laws. This Bond may be transferred to any successor of the Company or any entity owned by or under common ownership with the Company without the necessity of obtaining the Issuer’s consent or such an opinion.

Registered
No. R-_____

**UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF CRAWFORD**

**CITY OF PITTSBURG, KANSAS
TAXABLE INDUSTRIAL REVENUE BOND
(NORTHGATE PLAZA PROJECT)
SERIES 2019**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
2.00%	July 1, 2021	June [__], 2019

REGISTERED OWNER:

MAXIMUM PRINCIPAL AMOUNT:

THE CITY OF PITTSBURG, KANSAS, a municipal corporation organized and existing under the laws of the State of Kansas (the “Issuer”), for value received, promises to pay, but solely from the source hereinafter referred to, to the Registered Owner named above or registered assigns, on the Maturity Date shown above, the principal amount shown above or such lesser amount as may be outstanding hereunder as reflected in the bond registration books maintained by the Trustee. The Registered Owner shall note the principal amount outstanding hereunder in the Table of Cumulative Outstanding Principal Amount attached hereto, provided, however, that the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount of this Bond, in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Registered Owner hereof, either by check, electronic transfer or draft mailed to the Registered Owner at a stated address as it appears on the bond registration books of the Issuer kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States, interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the rate shown above per annum payable in arrears on each Interest Payment Date, commencing on July 1, 2020, and continuing thereafter until the said Cumulative Outstanding Principal Amount is paid in full **provided**, that so long as the Company is the sole Registered Owner, the Paying Agent may make payments of principal on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or

savings institution designated by such Bondowner and located in the continental United States. Interest shall be computed on the basis of a year of 360 days consisting of 12 months of 30 days each. Principal on this Bond shall be payable on the maturity date set forth above, unless such principal shall have been paid as a result of a redemption of the Bonds prior to such maturity date. The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$100,000 or any integral multiple of \$0.01 in excess thereof.

As used herein, the term “Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the terms of the hereinafter defined Indenture, less any amounts redeemed, as reflected in the bond registration books maintained by the Trustee.

The Trustee shall keep and maintain a record of the amounts deposited into the Project Fund pursuant to the terms of the Indenture as “Principal Amount Deposited into Project Fund” and shall enter the aggregate principal amount of this Bond then outstanding on its records as the “Cumulative Outstanding Principal Amount” on its records maintained for this Bond. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner hereof, pursuant to the optional redemption provisions of the Indenture, the Trustee shall enter on its records the principal amount paid on the Bond as “Principal Amount Paid Pursuant to Optional Redemption Provisions,” and shall enter the then outstanding principal amount of this Bond as “Cumulative Outstanding Principal Amount” on its records. The Registered Owner may from time to time enter the respective amounts deposited into the Project Fund pursuant to the terms of the Indenture under the column headed “Principal Amount Deposited Into Project Fund” on the attached Table of Cumulative Outstanding Principal Amount (the “Table”) and may enter the aggregate principal amount of this Bond then outstanding under the column headed “Cumulative Outstanding Principal Amount” on the attached Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner hereof pursuant to the optional redemption provisions of the Indenture, the Registered Owner may enter the principal amount paid on this Bond under the column headed “Principal Amount Paid Pursuant to Optional Redemption Provisions” on the Table and may enter the then outstanding principal amount of this Bond under the column headed “Cumulative Outstanding Principal Amount” on the Table. However, the records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on this Bond shall be the official records of the Cumulative Outstanding Principal Amount for all purposes.

THIS BOND is a duly authorized Bond of the Issuer designated “City of Pittsburg, Kansas Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019,” in the maximum aggregate principal amount of \$3,180,000 (the “Bonds”), to be issued for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing, furnishing and equipping a commercial project, and all rights-of-way and appurtenances necessary therefor (the “Project”), to be leased to Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company, jointly and severally (collectively, the “Company”), under the terms of a Lease Agreement dated as of June 1, 2019 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease Agreement”), between the Issuer and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations and Constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 to 12-1749d, inclusive, as amended, and pursuant to proceedings duly had by the governing body of the Issuer.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of June 1, 2019 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the Issuer and Security Bank of Kansas City, as trustee (the “Trustee”). Subject to the terms and conditions set forth therein,

the Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture on a parity with the Bonds. Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the owners of the Bonds, and the terms upon which the Bonds are issued and secured. *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

THIS BOND shall be subject to redemption and payment as provided in the Indenture.

THE BONDS are special obligations of the Issuer payable solely out of the rents, revenues and receipts derived by the Issuer from the Project and not from any other fund or source of the Issuer, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease Agreement, all as provided in the Indenture. The Bonds do not constitute general obligations of the Issuer or the State of Kansas, and neither the Issuer nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease Agreement, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in a special account created by the Issuer and designated the “City of Pittsburg, Kansas, Taxable Industrial Revenue Bond Fund – Northgate Plaza Project, Series 2019.”

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

SUBJECT TO the requirements for transfer set forth above in the legend contained on the face of this Bond, this Bond is transferable, as provided in the Indenture, only upon the books of the Issuer kept for that purpose at the above-mentioned office of the Trustee by the Registered Owner hereof in person or by such person’s duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or such person’s duly authorized attorney, and thereupon a new fully registered Bond or Bonds, without coupons, and in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully registered Bond without coupons in the maximum principal denomination of \$3,180,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

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

IN WITNESS WHEREOF, the City of Pittsburg, Kansas, has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon.

CITY OF PITTSBURG, KANSAS

By _____
Mayor

(SEAL)

ATTEST:

By _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is the Taxable Industrial Revenue Bond (Northgate Plaza Project), Series 2019, described in the Trust Indenture. The effective date of registration of this Bond is set forth below.

**SECURITY BANK OF KANSAS CITY,
as Trustee**

Date

By _____
Name: _____
Title: _____

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

<u>Date</u>	Principal Amount Deposited Into <u>Project Fund</u>	Principal Amount Paid Pursuant to Redemption <u>Provisions</u>	Cumulative Outstanding Principal <u>Amount</u>	Notation Made <u>By</u>
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(FORM OF ASSIGNMENT)
(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Bond on the books kept by the Trustee for
the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

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

Signature Guaranteed By:

[Seal]

(Name of Eligible Guarantor Institution (as)
defined by SEC Rule 17Ad-15, 12CFR
240.17Ad-15, or any similar rule which Trustee
deems applicable))

By _____
Title: _____

EXHIBIT B

REPRESENTATION LETTER

[DATE]

City of Pittsburg, Kansas
Pittsburg, Kansas

Security Bank of Kansas City, as Trustee
Kansas City, Kansas

Re: City of Pittsburg, Kansas \$3,180,000 Maximum Principal Amount of Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019

Ladies and Gentlemen:

In connection with the transfer of the above-described bonds (the “**Bonds**”) of the City of Pittsburg, Kansas (the “**Issuer**”) on this date to _____ (the “**Transferee**”), Transferee hereby represents, warrants and agrees as follows:

1. Transferee, on the date hereof, received from the Issuer one registered bond designated Taxable Industrial Revenue Bond (Northgate Plaza Project), Series 2019, in the maximum aggregate principal amount of \$3,180,000 and numbered R-1, becoming due on July 1, 2021, or when called, and bearing interest at the rate set forth therein from its date of authentication until its principal amount is paid in full.

2. Transferee fully understands

(a) that the Bonds have been issued under and pursuant to a Trust Indenture dated as of June 1, 2019 (the “**Indenture**”), between the Issuer and Security Bank of Kansas City (the “**Trustee**”); and

(b) that the Bonds are payable solely out of the rents, revenues and receipts to be derived from the leasing or sale of the Project to Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company, jointly and severally and any successors or assigns (collectively, the “**Company**”) under a Lease Agreement dated as of June 1, 2019 (the “**Lease**”), between the Issuer and the Company, which rents, revenues and receipts have been pledged and assigned by the Issuer to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bond.

3. Transferee understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds are not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. Transferee agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of an opinion of counsel acceptable

to the Issuer and the Transferee that all registration and disclosure requirements of the U.S. Securities and Exchange Commission and all other appropriate federal and Kansas securities laws and the securities laws of any other applicable state are complied with; provided, that the collateral assignment of the Bonds to the holder of the Mortgage (as defined in the Lease) shall be permitted.

5. The Company has (a) furnished to Transferee such information about itself as the Transferee deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to Transferee, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the Issuer and the terms and conditions of the offering of the Bonds, and (c) provided to Transferee all additional information which it has requested.

6. Transferee is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks associated with purchasing the Bonds. Transferee believes that the Bonds are a security of the kind that it wishes to purchase and hold for investment and that the nature and amount of the Bonds are consistent with Transferee's investment program.

7. The Transferee understands and agrees that the interest on the Bonds is subject to federal income taxation and is not tax-exempt for federal income tax purposes.

8. The Transferee has been furnished with copies of the Indenture, the Lease and the legal approving opinion of Gilmore & Bell, P.C.

[TRANSFEREE]

By: _____
Name:
Title:

BASE LEASE AGREEMENT

Dated as of June 1, 2019

Between

NORTHGATE ASSOCIATES LLC

and

HOK-NORTHGATE LLC

and

GM-NORTHGATE LLC

Jointly and Severally, as Lessor

And

CITY OF PITTSBURG, KANSAS,

as Lessee

Relating to:

\$3,180,000

(Aggregate Maximum Principal Amount)

City of Pittsburg, Kansas

Taxable Industrial Revenue Bonds

(Northgate Plaza Project)

Series 2019

BASE LEASE AGREEMENT

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Exhibit A – Description of the Project

BASE LEASE AGREEMENT

THIS BASE LEASE AGREEMENT dated as of June 1, 2019 (this “**Base Lease Agreement**”), by and between **NORTHGATE ASSOCIATES LLC**, a Kansas limited liability company, **HOK-NORTHGATE LLC**, a Kansas limited liability company, and **GM-NORTHGATE LLC**, a Kansas limited liability company, jointly and severally as lessor (collectively, the “**Company**”), and the **CITY OF PITTSBURG, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas, as lessee (the “**Issuer**”). *Capitalized terms not defined elsewhere herein shall have the meanings set forth in Article I.*

RECITALS:

1. The Company has requested that the Issuer issue \$3,180,000 maximum principal amount of Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019 (the “**Bonds**”), pursuant to the Bond Trust Indenture of even date herewith (the “**Indenture**”) between the Issuer and Security Bank of Kansas City, as trustee (the “**Trustee**”) for the purpose of providing funds to (a) acquire, purchase, construct, install, furnish and equip a commercial facility, including all rights-of-way and appurtenances necessary and convenient therefor, to be located adjacent and to the east of North Broadway and south of East 29th Street in Pittsburg, Kansas (collectively, the “**Project**”), and (b) pay certain costs related to the issuance of the Bonds.

2. In order to satisfy the requirements of the Act, the Issuer proposes to purchase and acquire a leasehold interest in the Project pursuant to this Base Lease Agreement and proposes to sublease the Project to the Company pursuant to the Lease Agreement dated as of June 1, 2019, between the Issuer, as sublessor, and the Company, as sublessee (the “**Lease Agreement**”), for rentals which will be sufficient to provide for the payment of the principal, redemption premium, if any, and interest on the Bonds.

3. The Company proposes to lease the Project to the Issuer and the Issuer desires to lease the Project from the Company upon the terms and conditions and for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by Company. The Company represents and warrants that:

(a) Each Company is a limited liability company duly organized and existing under the laws of the State of Kansas, has power and authority to own its properties and carry on its business as now being

conducted, and is duly qualified to do such business in the State of Kansas and wherever else such qualification is required.

(b) Neither the execution and delivery of this Base Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Base Lease Agreement conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) The Company is the owner of the Project.

Section 2.2. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Base Lease Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Base Lease Agreement, acting by and through its duly authorized officers. The Issuer agrees that it will do or use its best efforts to cause to be done all things necessary to preserve and keep in full force and effect the Issuer's existence.

(b) The Issuer is authorized, and has taken all necessary action, to issue the Bonds to provide funds for the purposes set forth in the Indenture, and proposes by the Lease Agreement to sublease the Project to the Company.

(c) No member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

ARTICLE III

LEASE OF THE PROJECT

Section 3.1. Lease of the Project. The Company hereby, rents, leases and lets to the Issuer the Company's interest in the Project, which Project is described on Exhibit A, attached hereto and incorporated herein, and the Issuer rents, leases and hires the Project from the Company, for rentals and upon and subject to the terms and conditions herein set forth, for a term commencing on the date hereof and ending on **July 1, 2021**; provided, however, this Base Lease Agreement shall remain in full force and effect so long as any obligation of the Company under the Lease Agreement shall be outstanding and so long as the Lease Agreement shall remain in effect (the "**Lease Term**"), unless sooner terminated in a manner provided for herein, provided that the Company shall not exercise any right so reserved in any manner that will interfere with any rights of the Issuer hereunder.

ARTICLE IV

QUIET ENJOYMENT; RENTAL PROVISIONS

Section 4.1. Quiet Enjoyment. The Company hereby covenants and agrees that it will not take any action, other than pursuant to **Article V, VII or VIII** of this Base Lease Agreement, to prevent the Issuer from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and

will, at the request of the Issuer, and at the expense of the Company, cooperate with the Issuer in order that the Issuer may have quiet and peaceable possession and enjoyment of the Project and will defend the Issuer's enjoyment thereof against all parties.

Section 4.2. Consideration and Rentals. The Issuer shall deposit the proceeds from the sale of the Bonds with the Trustee in accordance with the Indenture. Such deposit shall constitute full and complete payment of all rentals due hereunder and following such deposit the Issuer shall not have any obligation to make any payments to any Person in connection with this Base Lease Agreement.

Section 4.3. Sublease by Issuer. It is understood and agreed by the Issuer and the Company that the Issuer will sublease the Project to the Company pursuant to the Lease Agreement. The Issuer shall at no time agree to any amendment or modification of the provisions of the Lease Agreement without the prior written consent of the Company and the Trustee.

Section 4.4. Payment of Taxes. The Company covenants and agrees that it will, from time to time, promptly pay and discharge or cause to be paid and discharged when due and prior to delinquency all taxes, assessments and other governmental charges lawfully imposed upon the Project or any part thereof or upon the income and profits thereof.

ARTICLE V

SPECIAL COVENANTS

Section 5.1. Granting of Easements. If no Event of Default under this Base Lease Agreement shall have happened and be continuing, the Company may, to the extent permitted under the Indenture, at any time or times (a) grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any property included in the Project, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine. The Issuer agrees that it will execute and deliver or will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer and the Trustee of (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Company Representative requesting such instrument, and (iii) a certificate executed by the Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, is permitted by the Indenture, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Indenture.

Section 5.2. Indemnification. (a) The Company releases the Issuer and the Trustee from, agrees that the Issuer shall not be liable for, and indemnifies the Issuer and Trustee against, all liabilities, losses, damages (including reasonable attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Issuer on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (ii) any breach or default on the part of the Company in the performance of any covenant or agreement of the Company under the Transaction Documents, or any related document, or arising from any act or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof; (iv) the authorization, issuance and sale of the Bonds, and the provision of any information

furnished in connection therewith concerning the Project or the Company (including, without limitation, any information furnished by the Company for inclusion in, or as a basis for preparation of, the information statements filed by the Issuer) or arising from (1) any errors or omissions of any nature whatsoever such that the Bonds, when delivered to the owners thereof, are not validly issued and binding obligations of the Issuer or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer furnished by or attributable to the Company relating to the issuance of the Bonds or pertaining to the financial condition of the Company which, if known to the original purchaser, might be considered a material factor in its decision to purchase the Bonds; and (v) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii) and (iv) above brought thereon; provided, however, the indemnification contained in this paragraph shall not extend to the Issuer if such loss, claim, damage, liability or expense is the result of (a) the Issuer's (or any employees or agents thereof) negligence or willful misconduct, or (b) the Issuer not following the valid written instructions of the Company or the Owner of the Bonds relating to the Bonds delivered to the Issuer pursuant to the terms of the Transaction Documents.

(b) In case any action or proceeding is brought against the Issuer in respect of which indemnity may be sought hereunder, the Issuer shall promptly give notice of that action or proceeding to the Company, and the Company upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Issuer to give that notice shall not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company. The Issuer may employ separate counsel and participate in the defense at its own expense. The Company shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected members of the Issuer's governing body, officials, officers, attorneys, accountants, financial advisors, staff and employees of the Issuer. Such indemnification is intended to and shall be enforceable by the Issuer to the full extent permitted by law.

ARTICLE VI

ASSIGNMENT, SUBLEASING AND MORTGAGING

Section 6.1. No Assignment, Subleasing and Mortgaging of the Project by the Issuer. The Issuer agrees that, except for the assignment of its interest in the Lease Agreement to the Trustee pursuant to the Indenture, it will not sell, assign, convey, mortgage, encumber or otherwise dispose of its interest in this Base Lease Agreement or any part of its interest in the Project except as permitted by this Base Lease Agreement and the Lease Agreement during the Lease Term. If the laws of the State of Kansas at the time shall so permit, nothing contained in this Section shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of the complete interest of the Issuer in the Project to, any municipal or public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of leasing the Project; provided that, upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Base Lease Agreement to be kept and performed by the Issuer, shall be expressly assumed in writing by such entity resulting from such consolidation or surviving such merger or to which the Issuer's complete interest in the Project shall be transferred.

Section 6.2. Subordination to Lender. The Issuer acknowledges that the Company may grant a mortgage, assignment of rents and leases, UCC financing statements and other security documents (each, a "**Mortgage**") on the Project to a lender (each, a "**Mortgagee**") during the term of this Base Lease Agreement. The Issuer agrees that in such case this Base Lease Agreement would be subject to and subordinate to any such Mortgage and that the Mortgagee shall not be required to grant any rights of

nondisturbance with respect to this Base Lease Agreement. Upon the request of the Company, the Issuer shall provide any additional documentation evidencing such subordination as required by the Mortgagee.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Events of Default. An “Event of Default” or “default” shall mean, wherever used in this Base Lease Agreement, any failure by the Issuer to observe and perform any covenant, condition or agreement in this Base Lease Agreement on its part to be observed or performed and the lapse of a period of 60 days after written notice, specifying such failure and requesting that it be remedied, given to the Issuer and the Trustee by the Company, unless the Company shall agree in writing to an extension of such time prior to its expiration.

Section 7.2. Remedies on Default. Whenever an Event of Default specified in **Section 7.1** hereof shall have happened and be continuing, the Company shall have the option to provide for the termination of this Base Lease Agreement in the manner provided in **Article VIII**. The Issuer and the Company 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 Base Lease Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity; provided, however, no remedy shall be exercised against such party in any manner which may impair the payment of principal of, premium, if any, or interest on any of the Bonds.

Section 7.3. Performance by Issuer. The Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Company in writing, or shall have received the instrument to be executed, and at the Issuer’s option shall have received from the Company assurance or indemnity satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. Nothing in this Section is intended to imply that the Issuer must take any action or execute any instrument unless specifically required to do so by this Base Lease Agreement.

ARTICLE VIII

EARLY TERMINATION OF THIS BASE LEASE AGREEMENT

Section 8.1. Early Termination of this Base Lease Agreement.

(a) In the event the Company shall cause all of the Bonds to be paid in the manner set forth in **Article XIII** of the Indenture, the Company shall be entitled to terminate this Base Lease Agreement prior to the end of the Lease Term upon written notice to the Issuer and the Trustee. Upon such termination the Issuer shall deliver to the Company any instruments which may be reasonably required by the Company to evidence such termination and the relinquishment of all of the Issuer’s rights and interest in the Project and in this Base Lease Agreement.

(b) In the event that any Mortgagee exercises its rights of foreclosure pursuant to the terms of any Mortgage of the Project and subsequently takes title to the Project, such Mortgagee, shall be entitled to terminate this Base Lease Agreement upon five (5) days written notice to the Issuer, provided, that if the holder of any of the Bonds is an entity other than the Mortgagee or the lessee under the Lease Agreement, the Company shall remain liable for all outstanding amounts owed to Issuer under this Base Lease

Agreement or the Lease Agreement, including, but not limited to, the payment of principal, premium, if any, or interest on any of the Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given to the appropriate notice address by the methods set forth in the Indenture. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee and to the original purchaser of the Bonds. A duplicate copy of each notice given by the Issuer or the Company or either of them to the Trustee shall also be given to the other party hereto. The Issuer, the Company and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2. Binding Effect. This Base Lease Agreement shall inure to the benefit of and shall be binding upon Issuer, the Company and their respective successors and assigns. The Trustee shall be third-party beneficiary of this Base Lease Agreement.

Section 9.3. Severability. In the event any provision of this Base Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amounts Remaining in Funds and Accounts. It is agreed by the parties hereto that any amounts remaining in the Funds and Accounts under the Indenture upon (i) expiration or sooner termination of this Base Lease Agreement as provided herein or after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), and (ii) payment of fees and expenses of the Trustee in accordance with the Indenture, shall be paid in accordance with the provisions of the Indenture.

Section 9.5. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of **Article X** of the Indenture), this Base Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the Trustee and the Bondowner.

Section 9.6. Execution in Counterparts. This Base Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7. Applicable Law. This Base Lease Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 9.8. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9.9. Captions. The captions or headings in this Base Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Base Lease Agreement.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer has caused this Base Lease Agreement to be executed in its name and its seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Base Lease Agreement to be executed in its name and attested by its duly authorized officers all as of the date first above written.

NORTHGATE ASSOCIATES LLC,
a Kansas limited liability company

By: _____
Name: Stephen Block
Its: Manager

HOK-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Ed Hokanson
Its: Manager

GM-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Gene C. Malone, Jr.
Its: Manager

CITY OF PITTSBURG, KANSAS

(Seal)

By: _____
Name: Patrick O'Bryan
Title: Mayor

ATTEST:

Name: Tammy Nagel
Title: City Clerk

EXHIBIT A

Description of the Project

All real property, buildings, improvements, equipment, furnishings and machinery owned or leased by the Company and paid for in whole or in part with the proceeds of the Bonds and located or to be located on the following property:

LEGAL DESCRIPTION

TRACT 1:

A tract of land in the Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) of Section 17, Township 30 South, Range 25 East, Crawford County, Kansas, more particularly described as follows:

Beginning at a found iron pin at the Northwest (NW) corner of the tract and said iron pin being 195.92 feet South and 50.00 feet East of the Northwest (NW) corner of said SW/4 of the NW/4 of Section 17, Township 30 South, Range 25 East; proceed East 750.00 feet; thence South 494.40 feet; thence West 750.00 feet; thence North 491.19 feet to the above-mentioned point of beginning, EXCEPT any part thereof taken or used for right-of-way of Broadway Street.

ALSO EXCEPT that part of the above-described property conveyed to Wal-Mart Stores, Inc. by Warranty Deed recorded in Book 154, Page 380.

ALSO EXCEPT a part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 17, Township 30 South, Range 25 East of the 6th Principal Meridian, Crawford County, Kansas, and being more particularly described as follows: Commencing at the NW corner of said SW1/4 of the NW1/4; thence South 00 degrees 00'00" West and along the West line of said SW1/4 of the NW1/4 195.92 feet; thence South 89 degrees 27'30" East 50 feet to the true point of beginning, said point of beginning being on the East right of way line of Broadway Avenue, Pittsburg, Kansas; thence South 89 degrees 27'30" East 156 feet; thence South 00 degrees 00'00" West 100 feet; thence North 89 degrees 27'30" West 156 feet to the said East right of way line of Broadway Avenue; thence North along said right of way 100 feet to the point of beginning.

ALSO EXCEPT a part of the SW 1/4 of the NW 1/4 of Section 17, Township 30 South, Range 25 East of the Sixth Principal Meridian, Crawford County, Kansas, more particularly described as follows, to-wit: Beginning at a point 195.92 feet South of the Northwest corner of said SW/4 NW/4; thence South 262.5 feet; thence East 50 feet more or less to the East right of way line of Broadway Avenue; thence East 51'1" to the true point of beginning; thence East 120 feet; thence South 110 feet; thence West 120 feet; thence North 110 feet to the true point of beginning.

TRACT 2:

A part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 17, Township 30 South, Range 25 East of the 6th Principal Meridian, Crawford County, Kansas, and being more particularly described as follows: Commencing at the NW corner of said SW1/4 of the NW1/4; thence South 00 degrees 00'00" West and along the West line of said SW1/4 of the NW1/4 195.92 feet; thence South 89 degrees 27'30" East 50 feet to the true point of beginning, said point of beginning being on the East right of way line of Broadway Avenue, Pittsburg, Kansas; thence South 89 degrees 27'30" East 156 feet; thence South

00 degrees 00'00" West 100 feet; thence North 89 degrees 27'30" West 156 feet to the said East right of way line of Broadway Avenue; thence North along said right of way 100 feet to the point of beginning.

TRACT 3:

A part of the SW 1/4 of the NW 1/4 of Section 17, Township 30 South, Range 25 East of the Sixth Principal Meridian, Crawford County, Kansas, more particularly described as follows, to-wit: Beginning at a point 195.92 feet South of the Northwest corner of said SW/4 NW/4; thence South 262.5 feet; thence East 50 feet more or less to the East right of way line of Broadway Avenue; thence East 51'1" to the true point of beginning; thence East 120 feet; thence South 110 feet; thence West 120 feet; thence North 110 feet to the true point of beginning.

ALSO INCLUDING:

All adjacent Right-of-Way.

**CITY OF PITTSBURG, KANSAS,
As Lessor,**

AND

**NORTHGATE ASSOCIATES LLC
and**

**HOK-NORTHGATE LLC
and**

**GM-NORTHGATE LLC
Jointly and Severally, as Lessee**

LEASE AGREEMENT

Dated as of June 1, 2019

Relating to:

**\$3,180,000
(Aggregate Maximum Principal Amount)
City of Pittsburg, Kansas
Taxable Industrial Revenue Bonds
(Northgate Plaza Project)
Series 2019**

The interest of the City of Pittsburg, Kansas (the “Issuer”), in this Lease Agreement has been pledged and assigned to Security Bank of Kansas City, as Trustee under the Trust Indenture dated as of June 1, 2019, between the Issuer and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of June 1, 2019 (the “**Lease Agreement**”), between the **CITY OF PITTSBURG, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “**Issuer**”), as lessor, and **NORTHGATE ASSOCIATES LLC**, a Kansas limited liability company, **HOK-NORTHGATE LLC**, a Kansas limited liability company, and **GM-NORTHGATE LLC**, a Kansas limited liability company (collectively, the “**Company**”), jointly and severally as lessee;

WITNESSETH:

WHEREAS, the Issuer is authorized under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “**Act**”), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for commercial purposes, and to issue revenue bonds for the purpose of paying the cost of such facilities, and to pledge the income and revenues to be derived from the operation of such facilities to secure the payment of the principal of and interest on such bonds;

WHEREAS, pursuant to the Act, the governing body of the Issuer has passed Ordinance No. [_____] (the “**Ordinance**”) on May [___], 2019, authorizing the Issuer to issue its Taxable Industrial Revenue Bonds (Northgate Plaza Project), Series 2019, in the maximum principal amount of \$3,180,000 (the “**Bonds**”), for the purpose of acquiring real property and acquiring, constructing, installing and equipping a commercial project, including land, buildings, structures, improvements, fixtures, machinery, equipment, and all rights-of-way and appurtenances necessary and convenient therefor as hereinafter more fully described (the “**Project**”), and authorizing the Issuer to lease the Project to the Company;

WHEREAS, pursuant to the Base Lease Agreement dated as of June 1, 2019, between the Company and the Issuer (the “**Base Lease Agreement**”), the Issuer has leased the Project from the Company for the term stated therein;

WHEREAS, pursuant to the Ordinance, the Issuer is authorized to enter into a Trust Indenture of even date herewith (the “**Indenture**”), with Security Bank of Kansas City (the “**Trustee**”), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease Agreement with the Company under which the Issuer will acquire, purchase, construct, improve, furnish, equip and remodel the Project and will lease the Project to the Company in consideration of rental payments by the Company which will be sufficient to pay the principal of and interest on the Bonds;

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

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the Issuer and the Company 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 Agreement and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease Agreement shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease Agreement.

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

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

“Leasehold Mortgage” means any Leasehold Mortgage, Assignment of Rents and Leases and Security Agreement, relating to the Project and any other leasehold mortgage permitted pursuant to the provisions of **Section 10.4(b)** hereof.

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

“Mortgage” means, collectively, any mortgage, assignment of rents and leases, UCC financing statements, or other security documents granted by the Company on the Project to secure a loan to finance or refinance all or a portion of the Project.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, 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 Issuer and the Trustee) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, (c) the Base Lease Agreement and this Lease Agreement, (d) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the Issuer, (e) such minor defects, irregularities, encumbrances, easements, mechanic's liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Issuer, (f) the Mortgage, (g) any subleases permitted by **Section 3.4** hereof, and (h) any other lien, encumbrance, lease, easements, restrictions or covenants consented to by the Owner of 100% of the principal amount of the Bonds.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file at the principal office of the Company and which shall be available for reasonable inspection by the Issuer, the Trustee and their duly appointed representatives.

“Project Equipment” means all items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit C** attached hereto and by this reference made a part hereof, and all replacements thereof and substitutions therefor made pursuant to this Lease Agreement.

“Project Improvements” means all buildings, structures, improvements and fixtures located on or to be acquired, purchased, constructed, improved or remodeled on the Project Site pursuant to **Article IV** hereof, including all rights-of-way and appurtenances necessary and convenient therefor, as described in **Exhibit B** attached hereto and by this reference made a part hereof, and all additions, alterations, modifications and improvements thereof made pursuant to this Lease Agreement.

“Project Site” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

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 Agreement 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 Agreement 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 Agreement shall not be treated as a part of this Lease Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. By proper

action of its governing body, the Issuer has been duly authorized to execute and deliver this Lease Agreement, acting by and through its duly authorized officers.

(b) The Issuer proposes to acquire a leasehold interest in the Project Site, subject to Permitted Encumbrances, and proposes to acquire, purchase, construct, improve, furnish, equip and remodel or cause to be acquired, purchased, constructed, improved, furnished, equipped and remodeled on the Project Site the Project Improvements, and proposes to acquire and install, or cause to be acquired and installed, the Project Equipment in the Project Improvements or on the Project Site. The Issuer proposes to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project, all for the purpose of furthering the public purposes of the Act, and the governing body of the Issuer has found and determined that the acquisition, purchase, construction, improving, furnishing, equipping and remodeling of the Project will further the public purposes of the Act.

(c) To finance the costs of the Project, the Issuer proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(d) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, including all rents, revenues and receipts to be derived by the Issuer from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds.

(e) The Issuer will not mortgage the Project or pledge the revenues derived therefrom for any bonds or other obligations other than the Bonds except with the written consent of the Authorized Company Representative.

(f) The Issuer shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof.

(g) The acquisition, purchase, construction, improvement, furnishing, equipping and remodeling of the Project and the leasing of the Project by the Issuer to the Company will further the public purposes of the Act.

(h) No member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) Each Company is a duly organized and validly existing limited liability company organized under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) The Company has lawful power and authority to enter into this Lease Agreement and to carry out its obligations hereunder and by proper corporate action of its members, the Company has been duly authorized to execute and deliver this Lease Agreement.

(c) The execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease

Agreement by the Company 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 restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Company 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 Company under the terms of any instrument or agreement to which the Company is a party.

(d) The Project 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 Project will comply with all other applicable laws, rules and regulations.

(e) The Project is located wholly within the corporate limits of the Issuer.

Section 2.3. Survival of Representations. All representations of the Issuer and the Company contained in this Lease Agreement or in any certificate or other instrument delivered by the Issuer and the Company pursuant to this Lease Agreement, the Indenture, or any other Transaction Document, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The Issuer hereby rents, leases and lets the Project to the Company, subject to Permitted Encumbrances, and the Company hereby rents, leases and hires the Project from the Issuer, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease Agreement shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease Agreement, shall have an initial term commencing as of the date of this Lease Agreement and terminating on **July 1, 2021**.

Section 3.3. Possession and Use of the Project.

(a) The Issuer covenants and agrees that as long as neither the Issuer nor the Trustee has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the Issuer's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The Issuer covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act. The Company 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 Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Company 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 Company 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 Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company 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 Company may refrain from complying therewith.

Section 3.4. Sublease by the Company. The Company may rent and sublease all or portions of the Project for use by others in the normal course of its business without the consent of the Issuer. Any such subleases entered into after the effective date of this Lease Agreement shall be subject and subordinate in all respects to the provisions of this Lease Agreement. Nothing in this Lease Agreement shall allow the Issuer, its successors or assigns, to disturb the rights of a sublessee to use the Project under the terms and conditions as set forth in such sublessee's sublease with the Company.

Section 3.5. Subordination to Lender. The Issuer acknowledges that the Company may grant a Mortgage, Leasehold Mortgage, and/or other security on the Project to a lender (each, a "Mortgagee") during the term of this Lease Agreement. The Issuer agrees that in such case this Lease Agreement shall be subject to, and subordinate to, any such Mortgage or Leasehold Mortgage, and that the Mortgagee shall not be required to grant any rights of nondisturbance with respect to this Lease Agreement. Upon the request of the Company and at Company's sole cost and expense, the Issuer shall provide any additional reasonable documentation evidencing such subordination as required by the Mortgagee.

ARTICLE IV

PURCHASE, CONSTRUCTION, RENOVATION, INSTALLATION AND EQUIPPING OF THE PROJECT

Section 4.1. Issuance of the Bonds.

(a) In order to provide funds for the payment of the Project Costs, the Issuer agrees that it will issue, sell and cause to be delivered to the purchaser thereof the Bonds in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the Issuer. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Article and in the Indenture.

(b) The Issuer may authorize the issuance of Additional Bonds from time to time upon the terms and conditions provided in **Section 209** of the Indenture for the purposes described therein.

(c) If the Company is not in default hereunder, the Issuer will, at the request of the Company, from time to time, use its best efforts to issue the amount of Additional Bonds specified by the Company; provided that the terms of such Additional Bonds, the purchase price to be paid therefor and the manner in which the proceeds therefrom are to be disbursed shall have been approved in writing by the Company;

provided further that the Company and the Issuer shall have entered into an amendment to this Lease Agreement to provide for rent in an amount at least sufficient to pay principal and interest on the Additional Bonds when due and the Issuer shall have otherwise complied with the provisions of the Indenture with respect to the issuance of such Additional Bonds.

Section 4.2. Purchase, Construction, Renovation, Installation and Equipping of the Project.

The Issuer and the Company agree that the Issuer will and the Company as the agent of the Issuer shall, but solely from the Project Fund except as otherwise provided herein, acquire, purchase, construct, improve, furnish, equip and remodel the Project as follows:

(a) Concurrently with the execution of this Lease Agreement, the Issuer will acquire a leasehold interest in the Project Site and any Project Improvements and Project Equipment located on the Project Site.

(b) The Company will, on behalf of the Issuer, acquire, purchase, construct, improve and remodel the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may make minor changes in and to the construction contracts and the Plans and Specifications incorporated therein without the consent of the Issuer. The Company shall notify the Issuer in writing of major changes. Major changes shall be any change that has an estimated cost (increase or decrease) of \$250,000. The Company agrees that the aforesaid acquisition, purchase, construction, improvement and remodeling will, with such changes and additions as may be made hereunder, result in a Project suitable for use by the Company for its purposes, and that all real and personal property described therein is necessary in connection with the Project.

(c) The Company will, on behalf of the Issuer, purchase and install the Project Equipment in the Project Improvements or on the Project Site in accordance with the Plans and Specifications. The Issuer and the Company recognize that the Project Equipment is subject to change during the construction period and thereafter pursuant to the provisions of this Lease Agreement, and agree that the definitive list of the Project Equipment shall be the list maintained by the Trustee pursuant to **Section 10.8** of this Lease Agreement.

(d) The Company agrees that it will use its best efforts to cause the acquisition, purchase, construction, improvement, furnishing, equipping and remodeling of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such acquisition, purchase, construction, improvement, furnishing, equipping and remodeling commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose. The Company may seek reimbursement for all such funds advanced.

Section 4.3. Project Costs. The term Project Costs shall have the meaning set forth in the Indenture.

The Issuer hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The proceeds of the Bonds shall only be used to pay for Project Costs that are part of the Project.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture. The Issuer hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit D**, signed by an Authorized Company Representative of Northgate Associates LLC:

(a) requesting payment of a specified amount of such funds and directing to whom such amount shall be paid (whose name and address shall be stated);

(b) describing in reasonable detail each item of Project Costs for which payment is being requested;

(c) stating that each item for which payment is requested is or was necessary and appropriate in connection with the purchase, acquisition, construction, improvement, furnishing, equipping or remodeling of the Project, has been properly incurred and is a proper charge against the Project Fund, that the amount requested either has been paid, or is justly due, and has not been the basis of any previous requisition from the Project Fund; and

(d) stating that, except for the amounts, if any, stated in said certificate, to the best of their knowledge there are no outstanding statements which are then due and payable for labor, wages, materials, supplies or services in connection with the purchase, acquisition, construction, improving, furnishing, equipping or remodeling of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project or any part thereof, or setting out (i) all disputed statements and the reason for such disputes, and (ii) all statements in process but not yet presented to the Trustee for payment.

The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. In addition, the Project Costs may be paid or deemed to be paid in such manner as provided by the Trustee upon receipt of any such certificate.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the acquisition, purchase, construction, improvement, furnishing, equipping and remodeling of the Project has been completed in accordance with the Plans and Specifications, (b) that all costs and expenses incurred in the acquisition, purchase, construction, improvement, furnishing, equipping and remodeling of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the Issuer agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds, to the extent practical, pursuant to the appropriate written instructions of the Company, at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project lien free, the Company shall pay, in cash, the full amount of any such deficiency by making payments

thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the Issuer and the Trustee whole and harmless from any obligation to pay such deficiency.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the Issuer during this Lease Term, on or before 11:00 a.m., Trustee's local time, on each Interest Payment Date, as Basic Rent for the Project Site, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal of the Bonds and the interest thereon on such Interest Payment Date, shall be equal to the amount payable on such payment date as principal of the Bonds and the interest thereon as provided in the Indenture. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease Agreement and the Indenture. Subject to the other provisions of this Lease Agreement and the Indenture, at any time that the Company is the sole Bondowner, the Company may, at its option, make payments of Basic Rent, including prepayment of Basic Rent: (i) by tendering a portion of the principal amount of the Bonds equal to such principal payment thereon to the Trustee for cancellation, or (ii) via transaction entry on the trust records held by the Trustee and the Paying Agent without requiring the Company to wire or otherwise transfer any moneys to such Owner or the Trustee.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent the following amounts:

- (a) all reasonable fees, charges and expenses, including, without limitation, agent and counsel fees and expenses, of the Trustee and the Paying Agent incurred under the Indenture, the Lease Agreement or any other document entered into in connection with the Bonds, as and when the same become due;
- (b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;
- (c) all fees, costs, charges and expenses reasonably incurred in connection with the enforcement of any rights against the Company or the Project under this Lease Agreement or the Indenture by the Issuer, the Trustee or the Bondowners, except for such expenses as may be incurred solely as a result of the negligence or wrongful misconduct of the Issuer, the Trustee or both;
- (d) an amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer hereunder and in connection with the performance of its obligations under this Lease Agreement or the Indenture; and
- (e) all other payments of whatever nature which the Company has agreed to pay or assume under the provisions of this Lease Agreement, the Indenture or any other document entered into in connection with the Bonds.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease Agreement 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 irrespective of whether the Project shall have been started or completed, or whether the Issuer's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, 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 Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer, and regardless of the invalidity of any portion of this Lease Agreement.

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

Section 5.4. Prepayment of Basic Rent. The Company may at any time prepay all or any part of the Basic Rent provided for hereunder. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease Agreement.

Section 5.5. Redemption of Bonds. The Issuer and the Trustee, at the written direction of the Company, at any time the aggregate moneys in the Bond Fund are sufficient for such purposes or Bonds have been submitted in satisfaction thereof, shall (a) if the same are then redeemable under the provision of **Article III** of the Indenture, take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect the redemption of all or such part of the then Outstanding Bonds as may be specified by the Company, on such redemption date as may be specified by the Company or (b) cause such moneys in the Bond Fund or such part thereof as the Company shall direct, to be applied by the Trustee, to the extent practical, pursuant to the appropriate written instructions of the Company, for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof, or (c) a combination of (a) and (b) as provided in such direction.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) The Company 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 Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom or Basic Rent and other amounts payable under this Lease Agreement, 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 impair the security of the Bonds or materially encumber the Issuer's leasehold interest in the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company shall have the right, in its own name or in the Issuer's name, to contest the validity or amount of any tax, assessment or other governmental charge which the Company 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 Company, before instituting any such contest, gives the Issuer and the Trustee written notice of its intention so to do, (2) the Company 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 Company 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 Issuer agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall hold the Issuer and the Trustee whole and harmless from any reasonable costs and expenses the Issuer may incur related to any of the above.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or by any sublessee in such sublessee's name), and the Company (or any sublessee) shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Kansas Retailers' Sales Tax. The parties have entered into this Lease Agreement in contemplation that, under the existing provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with acquisition, purchase, construction, improving, furnishing, equipping or remodeling of the Project are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that the Issuer

shall, upon the request of and with the Company's assistance, promptly obtain from the State and furnish to the contractors and suppliers an exemption certificate for the acquisition, purchase, construction, improving, furnishing, equipping or remodeling of the Project. The Company covenants that said exemption shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Project.

ARTICLE VII

INSURANCE AND INDEMNIFICATION

Section 7.1. Insurance.

The Company shall maintain, or cause to be maintained at its sole cost and expense, insurance with respect to its property, the operation thereof and its business against such casualties, contingencies and risks (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in amounts not less than is customary and adequate in the case of organizations engaged in the same or similar activities and similarly situated and as is adequate to protect its property and operations. The amount and deductible provisions for the general liability insurance shall be subject to approval by the Issuer. The Company shall annually review the insurance it maintains pursuant hereto as to whether such insurance is customary and adequate. The Company's property insurance policy with respect to the Project shall name the Issuer as an additional insured, and shall name the Trustee as a loss payee thereunder. The Company's general liability policy shall name each of the Issuer and the Trustee as an additional insured.

All such insurance shall be maintained with responsible insurance carriers. Each policy or other contract for such insurance under which the Issuer or Trustee is named an additional insured or loss payee shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least ten (10) days after written notice of cancellation to the Company, the Trustee, and the Issuer.

The Company shall deposit with the Trustee and Issuer, at the closing of the Bonds, and annually on June 1 a certificate or certificates of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Company may maintain a single policy, blanket or umbrella policies, or a combination thereof, in which event the Company shall deposit with the Bond Trustee a certificate or certificates of the respective insurers as to the amount of coverage in force upon the property of the Company.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements of the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company 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 Project; provided, however, that additions of machinery and equipment installed in the Project by the Company not purchased or acquired from funds

deposited with the Trustee hereunder and not constituting repairs, renewals or replacements of Project Equipment under **Section 8.2** hereof shall remain the property of the Company and may be removed by the Company.

Section 8.2. Removal of Project Equipment. The Company shall cause the Project and all of its property used or useful in the conduct of its business and operations to be maintained, preserved and kept in good repair and working order and condition and in as safe condition as its operations will permit and will make all repairs, renewals, replacements and improvements thereof necessary for the efficient and advantageous conduct of its business and operations. Nothing in this Section shall obligate the Company to preserve, repair, renew or replace any element or unit of the Project or any of its property no longer used or no longer useful in the conduct of its business, or prevent the Company from discontinuing the operation of any element or unit of the Project or any of its property or from removing or demolishing any building or buildings, if in its judgment (evidenced, in the case of such a cessation other than in the ordinary course of business, by a determination by its governing board) such discontinuance is desirable in the conduct of its business and not disadvantageous in any material respect to the owners of the Bonds. The Company may make additions, alterations and changes to the Project or its property so long as such additions, alterations and changes are made in compliance with the provisions of this Lease Agreement and will not result in a violation of the provisions of this Lease Agreement, and the Company may dispose of any property as permitted by this Lease Agreement.

Section 8.3. Additional Improvements on the Project Site. The Company shall have and is hereby given the right, at its sole cost and expense, to construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company pursuant to the authority of this Section shall, during the life of this Lease Agreement, remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, and (c) to promptly and with due diligence either raze and remove in a good and workmanlike manner, or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty.

Section 8.4. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The Issuer agrees not to charge the Company any fees for any such permits or authorizations. 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 8.5. Mechanics' Liens.

(a) Neither the Issuer nor the Company shall do or suffer anything to be done whereby the Project, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record within 90 days after the date of filing. Notice is

hereby given that the Issuer shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company 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 Issuer in and to the Project or any part thereof.

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

Section 8.6. Option to Purchase Unimproved Portions of the Project Site. The Issuer hereby grants to the Company the right at any time and from time to time to purchase any unimproved portion or portions of the Project Site. For the purposes of this Section "unimproved" shall mean real property upon which no improvements are located, excluding improvements relating to streets, sidewalks, bridges, stormwater, grading, utility or other similar improvements. As conditions to such purchase the Issuer and the Trustee shall receive from the Company at least 30 days prior to the proposed date for completing the purchase the following (1) a written certificate from the Company to the effect (i) that the Company desires to purchase an unimproved portion of the Project Site, (ii) the proposed date for completing the purchase, and (iii) that the Company is not in default under any of the provisions of this Lease Agreement or the Indenture, (2) providing the Issuer and the Trustee with an adequate legal description of that portion (together with the interest in such portion) of the property to be purchased and a copy of a title commitment with respect to such property, (3) a certificate of an independent engineer or surveyor, dated not more than 30 days prior to the date of the request stating that, in the opinion of the person signing such certificate, (i) the unimproved portion of the Project Site is unimproved within the definition contained in this Section (ii) the unimproved portion of the Project Site so proposed to be purchased is not needed for the operation of the Project, and (iii) the proposed purchase will not impair the usefulness of the Project for its intended purposes and will not destroy the means of ingress thereto and egress therefrom, and (4) the written consent of the Owners of all of the Bonds.

The purchase price for such unimproved portion of the Project Site shall be determined by the Owners of all of the Bonds and shall be received in writing by the Issuer and the Trustee at least 10 days prior to the proposed date for completing the purchase. Such purchase price shall be paid to the Trustee at the time the Issuer executes and delivers a release from the Base Lease and this Lease Agreement of the property which is to be purchased to the Company. The Trustee shall deposit such amount (if any) into the Bond Fund. If such amount is more than \$1,000, such amount shall be used by the Trustee to redeem Bonds in accordance with **Section 302(a)** of the Indenture. If such amount is \$1,000 or less the Trustee shall apply such amount to the next interest payment on the Bonds.

Upon the Issuer's receipt of written notice from the Trustee that the Trustee has received all of the items required by this Section, any duly authorized officers of the Issuer shall execute the necessary documents to release such property from the Base Lease Agreement and Lease Agreement.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

In the event of damage to or destruction of the Project, or any portion thereof, resulting from fire or other casualty, or in the event the Project, or any portion thereof, is condemned or taken for any public or quasi-public use or title thereto is found to be deficient, the Net Proceeds of such insurance, condemnation, or taking shall be paid directly to the Company.

The Company shall promptly notify the Issuer in writing as to the nature and extent of such damage, loss or condemnation and whether it is practicable or desirable to rebuild, repair, restore or replace such damage or loss or acquire or construct substitute improvements. If the Company shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, to the extent permitted by law, the Company will forthwith replace, repair, reconstruct or restore the Project to substantially the same or an improved condition or utility value as existed prior to the event affecting the Project and will to the extent necessary apply the Net Proceeds received by the Company to the payment or reimbursement of the costs of such replacement, repair, reconstruction or restoration. Any remaining balance not required for said purpose shall be retained by the Company. If the Company shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable, any Net Proceeds received with respect to any such damage, loss or condemnation to the Project shall be paid or applied as required by the holder of the Mortgage, if any. The Company agrees that it shall be reasonable in exercising its judgment pursuant to this Article.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the Issuer; Exculpation and Indemnification. The Issuer makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the Issuer from, agrees that the Issuer shall not be liable for and agrees to hold the Issuer 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 Project or the use thereof; unless such loss is the result of the Issuer's gross negligence or willful misconduct.

Section 10.2. Surrender of Possession. Upon accrual of the Issuer's right of re-entry because of the Company's default hereunder or upon the cancellation or termination of this Lease Agreement for any reason other than the Company's purchase of the Project pursuant to **Article XI** hereof, the Company shall peacefully surrender possession of the Project to the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Company shall have the right within 90 days (or such later date as the Issuer may agree to) after the termination of this Lease Agreement to remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company 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 Company and which are not so removed from the Project prior to the expiration of said period shall be the separate and absolute property of the Issuer.

Section 10.3. Issuer's Right of Access to the Project. The Company agrees that the Issuer and the Trustee and their duly authorized agents shall have the right to enter upon the Project Site during normal business hours after delivering written notice to the Company (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, furnishing, equipping or remodeling provided for in **Section 4.2** hereof, (b) to perform such work in and about the Project made necessary by reason of the Company's default under any of the provisions of this Lease Agreement, (c) to inspect the Project for compliance with the Issuer's building, fire and zoning codes, and (d) following an Event of Default, to exhibit the Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Leasehold Mortgages

(a) If no Event of Default under this Lease Agreement shall have happened and be continuing, the Company may at any time or times (1) grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (2) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (3) incur Permitted Encumbrances. The Issuer agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer and the Trustee of: (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Indenture. If the instrument of grant shall provide that any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the Trustee under this Lease Agreement and the Indenture and shall not be affected by any termination of this Lease Agreement or default on the part of the Company hereunder then such easement shall not have any effect whatsoever without the written consent of the Issuer. If no Event of Default shall have happened and be continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company, but, in the event of the termination of this Lease Agreement or during the continuation of an Event of Default, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer and the Trustee.

(b) The Company may mortgage the leasehold estate created by this Lease Agreement without the Issuer's consent, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such leasehold mortgage, and the note or other obligation secured thereby, is delivered to the Issuer and the Trustee within thirty (30) days after the execution thereof.

(c) Notwithstanding anything contained to the contrary in this Lease Agreement, (a) the Company shall have the right to assign this Lease Agreement and any subleases to any mortgagee or leasehold mortgagee or to the designee or nominee of such mortgagee or leasehold mortgagee, without the consent of the Issuer, and (b) if the mortgagee or leasehold mortgagee or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of such mortgage or leasehold mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, the mortgagee or leasehold mortgagee or its designee or nominee shall have the further right to further assign this Lease Agreement and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the Issuer and such

assignee shall enjoy all rights, powers and privileges granted herein to any such mortgagees or leasehold mortgagees.

(d) If (1) the Company shall execute and deliver a Leasehold Mortgage, and (2) the provisions and conditions of subsection (b) above shall have been fully complied with and observed with respect to such Leasehold Mortgage, and (3) the Company or the mortgagee under such Leasehold Mortgage shall have notified the Issuer in writing of the making thereof and of the name and address of such Leasehold Mortgagee; then:

(i) this Lease Agreement may not be modified, amended, canceled or surrendered by agreement between the Issuer and the Company, without the prior written consent of such leasehold mortgagee;

(ii) there shall be no merger of this Lease Agreement or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease Agreement or said leasehold estate and said fee title shall be owned by the same person or persons, without the prior written consent of such leasehold mortgagee;

(iii) the Issuer shall serve upon each such leasehold mortgagee a copy of each notice of default and each notice of termination given to the Company under this Lease Agreement, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each leasehold mortgagee;

(iv) each leasehold mortgagee shall have the same period of time after the service of such notice upon it within which the Company may remedy or cause to be remedied the default which is the basis of the notice plus twenty (20) days; and the Issuer shall accept performance by such leasehold mortgagee as timely performance by the Company;

(v) such leasehold mortgagee shall not be required to continue possession or continue foreclosure proceedings under paragraph (vii) of this subsection if the particular default has been cured;

(vi) the Issuer may exercise any of its rights or remedies with respect to any other default by the Company occurring during the period of such forbearance provided for under said paragraph (vii), subject to the rights of the leasehold mortgagee under this Section as to such other defaults;

(vii) in case of default by the Company under this Lease Agreement, other than a default in the payment of money, the Issuer shall take no action to effect a termination of this Lease Agreement by service of a notice or otherwise, without first giving to such leasehold mortgagee a reasonable time within which either to obtain possession of the Project and to remedy such default in the case of a default which is susceptible of being cured when such leasehold mortgagee has obtained possession of the Project, or to institute and with reasonable diligence to complete foreclosure proceedings or otherwise acquire the Company's leasehold estate under this Lease Agreement in the case of a default which is not so susceptible of being remedied by such leasehold mortgagee, provided that the leasehold mortgagee shall deliver to the Issuer within thirty (30) days after the expiration of the grace period applicable to the particular default, an instrument unconditionally agreeing to remedy such default other than a default not susceptible of being remedied by such leasehold mortgagee. The Issuer's right to terminate this Lease Agreement by reason of a default which is not susceptible of being remedied by such leasehold mortgagee shall end with respect to such default when the leasehold

mortgagee obtains possession of the Project as aforesaid, which possession shall be deemed to include possession by a receiver;

(viii) if this Lease Agreement shall terminate prior to the expiration of the Lease Term, the Issuer shall enter into a new lease for the Project with any such leasehold mortgagee, or its designee or nominee, for the remainder of the term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the Issuer, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the Issuer under the Lease Agreement on behalf of the Company, on condition that:

(A) such leasehold mortgagee shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, such leasehold mortgagee shall cure all defaults of the Company under the Lease Agreement (susceptible of being cured by such leasehold mortgagee) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease Agreement but for such termination, and shall pay or cause to be paid to the Issuer on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the Issuer or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(ix) if such leasehold mortgagee or its designee or nominee shall become the owner of this Lease Agreement either following foreclosure of such leasehold mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and such leasehold mortgagee or its designee or nominee shall have assigned this Lease Agreement, such leasehold mortgagee or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

If more than one leasehold mortgagee shall request such new lease, such new lease shall be made with and delivered to the leasehold mortgagee (or its nominee or designee) whose mortgage is prior in lien to those of any others. The opinion of a reputable title insurance company, licensed to insure title to real property in the State of Kansas, setting forth the order of priority of such mortgage liens, may be relied on by the Issuer and the Trustee as conclusive evidence of such priority.

Section 10.5. Indemnification of Issuer and Trustee. The Company shall indemnify and save the Issuer and the Trustee harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the Lease Term, and against and from all claims, losses, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) arising during the Lease Term from (a) any condition of the Project caused by the Company, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease Agreement, (c) any contract entered into in by the Company or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, furnishing, equipping or remodeling of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or

sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the Issuer or the Trustee if (i) such claim is the result of work being performed at the Project by employees of the Issuer, or (ii) such claim is the result of the Issuer's negligence or willful misconduct. The Company shall indemnify and save the Issuer and the Trustee harmless from and against all costs and expenses, including, without limitation, reasonable attorney's fees and expenses, (except those which have arisen from the willful misconduct or negligence of the Issuer or the Trustee) 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 Issuer or the Trustee, the Company shall defend them or either of them in any such action or proceeding.

The Company agrees to indemnify and reimburse the Issuer and the Trustee, and their respective members, directors, officers, employees, agents, attorneys, successors and assigns for any liability, loss, damage, expense or cost, including, without limitation, reasonable attorney's fees and expenses, arising out of or incurred by the Issuer or the Trustee or their respective members, directors, officers, employees, agents, attorneys, successors and assigns, which is the result of any liability, loss, damage, expense or cost sustained as a result of any failure to comply any law, statute, ordinance, rule, code, order or regulation, whether federal, state or local, relating to environmental protection, environmental contamination and the cleanup thereof, asbestos, underground storage tanks and other environmental matters ("**Environmental Laws**") or of there being located in, on or about the Project Site or the Project any hazardous, dangerous, or toxic pollutants, wastes or chemicals, together with reasonable attorney's fees and expenses incurred in connection with the defense of any action against the Issuer or the Trustee arising out of the above. The Company represents and warrants to the Issuer and the Trustee that the Project Site and the Project and their respective prior and existing uses have at all times complied with and will comply with all Environmental Laws. The Company shall promptly and diligently take or cause to be taken all actions necessary to cure any noncompliance with any Environmental Law and shall be solely responsible for any violation by it, its employees or agents of any Environmental Laws, and the Company further agrees that it will take all necessary action to clean-up, eliminate or contain any environmental contamination, including contamination caused by any previous owner of the Project or the Project Site, and will pay in full all costs and expenses associated with such action.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The Issuer agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the Issuer will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, Company will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation expressly assumes in writing all the obligations of the Company contained in this Lease Agreement.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the Issuer and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the Issuer and the Trustee in the Project. Upon the written instructions of the Owner of the Bonds, the Trustee

shall file, at the expense of the Company, all instruments the Owner of the Bonds shall deem necessary to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The Issuer and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens. The Trustee shall, at the expense of the Company, maintain a file showing a description of all Project Equipment, said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase the Project at any time, prior to the expiration of the Lease Term upon payment in full of all Bonds then Outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the Issuer and to the Trustee, if any, of the Bonds as shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Indenture, and shall specify therein the date of closing such purchase, which date shall be not less than 30 nor more than 180 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then Outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to the Issuer's costs, expenses, including reasonable attorney's fees, related to conveying the Project to the Company; plus
- (d) the sum of \$100.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the Issuer will upon receipt of the purchase price deliver to the Company the following:

- (a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture.
- (b) Documents terminating the Base Lease Agreement and Lease Agreement.

The Authorized Issuer Representative is authorized to execute any and all documents necessary under this Section without any further action from the governing body of the Issuer.

Section 11.3. Relative Position of Option and Indenture. The options and obligation to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease Agreement, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease Agreement.

Section 11.4. Obligation to Purchase the Project. The Company hereby agrees to purchase, and the Issuer hereby agrees to sell, the Project for the sum of \$100 at the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof and all other fees, charges and expenses having been made in accordance with the provisions of the Indenture, this Lease Agreement and all other documents entered into with respect to the Bonds.

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 Agreement:

(a) Default in the due and punctual payment of Basic Rent or Additional Rent for a period of ten (10) days following written notice to the Company by the Issuer or the Trustee; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease Agreement on the Company’s part to be observed or performed, and such default shall continue for 60 days after the Issuer or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 60-day period, and (2) the Company diligently prosecutes such cure to completion); or

(c) The Company 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 Company’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 Company shall vacate or abandon the Project, or shall have been ejected from the Project or any portion thereof by reason of a defect in title to the Project, and the same shall remain uncared for and unoccupied for a period of 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 Issuer may at the Issuer's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease Agreement in the Indenture), then or at any time thereafter, and while such Event of Default shall continue, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease Agreement to become due and payable, as provided in the Indenture;

(b) give the Company written notice of intention to terminate this Lease Agreement 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 Company's rights to possession of the Project shall cease and this Lease Agreement shall thereupon be terminated, and the Issuer may re-enter and take possession of the Project; or

(c) without terminating this Lease Agreement, re-enter the Project 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 Project without terminating this Lease Agreement, the Issuer shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the Issuer may deem advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project by the Issuer shall be construed as an election on the Issuer's part to terminate this Lease Agreement, and no such re-entry or taking of possession by the Issuer shall relieve the Company 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 Agreement, all of which shall survive such re-entry or taking of possession, and the Company shall continue to pay the Basic Rent and Additional Rent provided for in this Lease Agreement until the end of this Lease Term, whether or not the Project shall have been relet, less the net revenues, if any, of any reletting of the Project after deducting all of the Issuer's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Said net revenues of any reletting shall be deposited in the Bond Fund. Having elected to re-enter or take possession of the Project without terminating this Lease Agreement, the Issuer may (subject, however, to any restrictions against termination of this Lease Agreement in the Indenture), by notice to the Company given at any time thereafter following an Event of Default, elect to terminate this Lease Agreement 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 Agreement shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer may enter and expel the Company and those claiming through or under the Company 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 Issuer 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 Company under this Lease Agreement.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the Issuer and Bondowners that its obligations under this Lease Agreement shall survive the cancellation and termination of this Lease Agreement, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease Agreement, all at the time or times provided in this Lease Agreement; provided, however, that upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, the Company's obligation under this Lease Agreement shall thereupon cease and terminate in full.

Section 12.4. Limitation of Liability and Indemnity. Notwithstanding anything contained to the contrary in this Lease Agreement, it is agreed that the Issuer will look only to the Company's interest in and to the Project and any sublease with respect thereto for the collection of any judgment (or other judicial process) requiring the payment of money by the Company in the event of a breach or default under this Lease Agreement by the Company, and no other property or assets of the Company or its partners or principal, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any such judgment (or other judicial process).

Section 12.5. Performance of the Company's Obligations by the Issuer. If the Company shall fail to keep or perform any of its obligations as provided in this Lease Agreement in the making of any payment or performance of any obligation, then the Issuer, or the Trustee in the Issuer's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the Issuer or the Trustee, and without waiving or releasing the Company 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 Issuer or the Trustee and all necessary incidental reasonable costs and expenses (including, without limitation, interest at the Trustee's prime rate plus 2% and reasonable attorney's fees and expenses) incurred by the Issuer or the Trustee in performing such obligations shall be deemed Additional Rent and shall be paid to the Issuer or the Trustee on demand, and if not so paid by the Company, the Issuer or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.6. Rights and Remedies Cumulative. The rights and remedies reserved by the Issuer and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Issuer and the Company 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 Agreement, 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 12.7. 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 Company of any covenant, agreement or undertaking by the Company, the Issuer or the Trustee may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the Issuer's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the Issuer or the Trustee.

Section 12.8. Notice of Defaults Under Section 12.1; Opportunity of Company to Cure Defaults.

(a) Anything herein to the contrary notwithstanding, no default specified in **Section 12.1(c)** through **(e)** shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given by the Issuer, the Trustee or by the Owners of 25% in aggregate principal amount of all Bonds Outstanding to the Company and the Company shall have had 30 days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such period; provided, however, if any such default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company within such period and diligently pursued until the default is corrected.

(b) Anything herein to the contrary notwithstanding, no default specified in **Section 12.1(b)** shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given (i) at any time the Company is the Owner of 100% in aggregate principal amount of all Bonds Outstanding, by the Issuer or Trustee, and (ii) at any time the Company is not the Owner of 100% in aggregate principal amount of all Bonds Outstanding, to the Company and the Company shall have had 30 days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such period; provided, however, if any such default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company within such period and diligently pursued until the default is corrected.

(c) With regard to any alleged default concerning which notice is given to the Company under the provisions of this Section, the Issuer hereby grants the Company full authority for account of the Issuer to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the Issuer, with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts in order to remedy such default.

Section 12.9. Trustee's Exercise of the Issuer's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article, upon notice as required of the Issuer unless the Issuer has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company shall have the right to assign, transfer, encumber or dispose of this Lease Agreement or any interest therein or part thereof, with the written consent of the governing body of the Issuer, for any lawful purpose under the Act; provided, however, the prior written consent of the governing body of the Issuer shall not be required if such assignee is an affiliate (an entity that the Company controls, is controlled by, or is under common control with) of the Company. Notwithstanding any other provision of this Section or other provision in this Lease Agreement, the sole requirement of the Company with respect to an

assignment to such an affiliate is to provide notice of such event within sixty (60) days thereafter to the Issuer. With respect to any other assignment, the Company shall comply with the following conditions:

- (1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;
- (2) Such assignment shall include the entire then unexpired term of this Lease Agreement and an assumption of all obligations of the Company under the Base Lease Agreement and this Lease Agreement;
- (3) A duplicate original of such assignment shall be delivered to the Issuer and the Trustee within ten (10) days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease Agreement on the part of the Company to be performed and observed;
- (4) At the time of any such assignment there shall be: (i) no damage or destruction to the Project which has not been repaired, restored and replaced in accordance with the provisions of this Lease Agreement, unless any funds then held by the Company for the purposes of such repair, restoration and replacement are simultaneously transferred to the assignee and (ii) no unpaid taxes, assessments and similar charges under **Section 6.2** hereof.

Upon the satisfaction of the conditions set forth herein, the assignor shall be relieved of all further liability occurring on and after the effective date of such assignment, provided that such assignment shall not relieve the assignor of its obligations pursuant to **Section 10.5**. The consent of the Issuer to any assignment, transfer, encumbrance or disposition described in this subsection (a) shall not be unreasonably withheld or delayed.

(b) The Company shall have the right, without the consent of the Issuer but with notice to the Issuer and Trustee, to sublet all of the Project to a single entity for any lawful purpose under the Act. The Company shall have the right, without the consent of the Issuer, to sublet any part of the Project to more than one entity in the ordinary course of its business for any lawful purpose under the Act. No sublease of the Project shall release or discharge the Company 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 Agreement shall continue as if no such sublease had been made. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the Issuer's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

If for any reason this Lease Agreement and the leasehold estate of the Company hereunder is terminated by the Issuer by summary proceedings or otherwise in accordance with the terms of this Lease Agreement, the Issuer covenants and agrees that such termination of this Lease Agreement shall not result in a termination of any sublease affecting the Project or any part or parts thereof and that they shall all continue for the duration of their respective terms and any extensions thereof as a direct lease between the Issuer hereunder and the sublessee thereunder, with the same force and effect as if the Issuer hereunder had originally entered into such sublease as landlord thereunder. Any such sublessee shall not be named or joined in any action or proceeding by the Issuer under this Lease Agreement to recover possession of the Project or for any

other relief if such sublessee is not then in default under the terms of its sublease beyond any applicable grace period for curing the same. The Issuer shall, upon request, execute, acknowledge and deliver such agreements evidencing and agreeing to the foregoing in a form reasonably satisfactory to the Company.

Any consent of the Issuer required by this subsection (b) shall not be unreasonably withheld or delayed.

Section 13.2. Assignment of Revenues by Issuer. The Issuer shall assign and pledge any rents, revenues and receipts receivable under this Lease Agreement, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

Section 13.3. Assignment by Issuer.. The Issuer may assign its interest in and pledge any moneys receivable under this Lease Agreement to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by Issuer. During this Lease Term, the Issuer agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease Agreement or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be given to or filed with the Issuer, the Trustee, the Company or the Owners of the Bonds if the same is given or filed in the manner and at the addresses specified in the Indenture.

Section 15.2. Issuer Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease Agreement it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the Issuer 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. Net Lease. The parties hereto agree (a) that this Lease Agreement shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the Issuer and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same

become due and payable, and (c) that if after the principal of and interest on the Bonds and all fees, expenses and costs incident to the payment of the Bonds have been paid in full the Trustee or the Issuer holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease Agreement, and except as otherwise provided in this Lease Agreement and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon the general credit or taxing powers of the Issuer or the State of Kansas. Such limitation shall not apply to any liability or charge directly resulting from the Issuer's breach of any provision, covenant or agreement contained herein.

Section 15.5. Governing Law. This Lease Agreement shall be construed in accordance with and governed by the laws of Kansas.

Section 15.6. Binding Effect. This Lease Agreement shall be binding upon and shall inure to the benefit of the Issuer and the Company and their respective successors and assigns.

Section 15.7. Severability. If for any reason any provision of this Lease Agreement 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 Agreement 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. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10. Satisfaction of Company's Obligations. Any obligation of the Company under this Lease Agreement, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance pursuant to **Article VII**, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

[The remainder of this page intentionally left blank]

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

CITY OF PITTSBURG, KANSAS

By: _____
Mayor

(Seal)

ATTEST:

By: _____
City Clerk

NORTHGATE ASSOCIATES LLC,
a Kansas limited liability company

By: _____
Name: Stephen Block
Its: Manager

HOK-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Ed Hokanson
Its: Manager

GM-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Gene C. Malone, Jr.
Its: Manager

EXHIBIT A

PROJECT SITE

TRACT 1:

A tract of land in the Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) of Section 17, Township 30 South, Range 25 East, Crawford County, Kansas, more particularly described as follows:

Beginning at a found iron pin at the Northwest (NW) corner of the tract and said iron pin being 195.92 feet South and 50.00 feet East of the Northwest (NW) corner of said SW/4 of the NW/4 of Section 17, Township 30 South, Range 25 East; proceed East 750.00 feet; thence South 494.40 feet; thence West 750.00 feet; thence North 491.19 feet to the above-mentioned point of beginning, EXCEPT any part thereof taken or used for right-of-way of Broadway Street.

ALSO EXCEPT that part of the above-described property conveyed to Wal-Mart Stores, Inc. by Warranty Deed recorded in Book 154, Page 380.

ALSO EXCEPT a part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 17, Township 30 South, Range 25 East of the 6th Principal Meridian, Crawford County, Kansas, and being more particularly described as follows: Commencing at the NW corner of said SW1/4 of the NW1/4; thence South 00 degrees 00'00" West and along the West line of said SW1/4 of the NW1/4 195.92 feet; thence South 89 degrees 27'30" East 50 feet to the true point of beginning, said point of beginning being on the East right of way line of Broadway Avenue, Pittsburg, Kansas; thence South 89 degrees 27'30" East 156 feet; thence South 00 degrees 00'00" West 100 feet; thence North 89 degrees 27'30" West 156 feet to the said East right of way line of Broadway Avenue; thence North along said right of way 100 feet to the point of beginning.

ALSO EXCEPT a part of the SW 1/4 of the NW 1/4 of Section 17, Township 30 South, Range 25 East of the Sixth Principal Meridian, Crawford County, Kansas, more particularly described as follows, to-wit: Beginning at a point 195.92 feet South of the Northwest corner of said SW/4 NW/4; thence South 262.5 feet; thence East 50 feet more or less to the East right of way line of Broadway Avenue; thence East 51'1" to the true point of beginning; thence East 120 feet; thence South 110 feet; thence West 120 feet; thence North 110 feet to the true point of beginning.

TRACT 2:

A part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 17, Township 30 South, Range 25 East of the 6th Principal Meridian, Crawford County, Kansas, and being more particularly described as follows: Commencing at the NW corner of said SW1/4 of the NW1/4; thence South 00 degrees 00'00" West and along the West line of said SW1/4 of the NW1/4 195.92 feet; thence South 89 degrees 27'30" East 50 feet to the true point of beginning, said point of beginning being on the East right of way line of Broadway Avenue, Pittsburg, Kansas; thence South 89 degrees 27'30" East 156 feet; thence South 00 degrees 00'00" West 100 feet; thence North 89 degrees 27'30" West 156 feet to the said East right of way line of Broadway Avenue; thence North along said right of way 100 feet to the point of beginning.

TRACT 3:

A part of the SW 1/4 of the NW 1/4 of Section 17, Township 30 South, Range 25 East of the Sixth Principal Meridian, Crawford County, Kansas, more particularly described as follows, to-wit: Beginning at a point 195.92 feet South of the Northwest corner of said SW/4 NW/4; thence South 262.5 feet; thence East 50 feet more or less to the East right of way line of Broadway Avenue; thence East 51'1" to the true point of beginning; thence East 120 feet; thence South 110 feet; thence West 120 feet; thence North 110 feet to the true point of beginning.

ALSO INCLUDING:

All adjacent Right-of-Way.

EXHIBIT B

PROJECT IMPROVEMENTS

All buildings, structures, improvements and fixtures located on or to be acquired or purchased for the construction, improvement, furnishing, equipping or remodeling of the Project Site pursuant to **Article IV** hereof, including all rights-of-way and appurtenances necessary and convenient therefor, and paid for in whole or in part from the proceeds of Bonds and all additions, alterations, modifications and improvements thereof made pursuant to this Lease Agreement.

EXHIBIT C

PROJECT EQUIPMENT

All items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site, or for use in connection with the Company's business, pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds and all replacements thereof and substitutions therefor made pursuant to this Lease Agreement.

EXHIBIT D

[FORM OF REQUISITION CERTIFICATE]

Requisition No. _____

Date: _____

REQUISITION CERTIFICATE

TO: SECURITY BANK OF KANSAS CITY, AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF JUNE 1, 2019, BETWEEN THE CITY OF PITTSBURG, KANSAS, AND THE TRUSTEE, AND LEASE AGREEMENT DATED AS OF JUNE 1, 2019, BETWEEN THE CITY OF PITTSBURG, KANSAS, AND NORTHGATE ASSOCIATES LLC.

The undersigned hereby requests that a total of \$_____ be paid for Project Costs (as defined in said Lease) in such amounts, to such payees and for such purposes as set forth on **Schedule 1** attached hereto.

I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the acquisition, purchase, construction, improving, furnishing, equipping or remodeling of the Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by or are justly due to the persons whose names and addresses are stated above, and have not been the basis of any previous requisition from the Project Fund; (ii) as of this date, except for the amounts referred to above, there are no, to the best of my knowledge, outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improving, furnishing, equipping or remodeling of said buildings and improvements which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof; and (iii) no part of the several amounts paid or due as stated above has been or is being made the basis for the withdrawal of any moneys from the Project Fund in any previous or pending application for payment made pursuant to said Lease.

For any payee which is the Company the undersigned hereby instructs the Trustee to make such payment by electronic transfer to the following account: _____, ABA No. _____, Credit Account No. _____ (Northgate Associates LLC).

NORTHGATE ASSOCIATES LLC

By: _____

Name: _____

Title: _____

SCHEDULE 1 TO REQUISITION CERTIFICATE

Amount

Payee and Address

Description

\$ _____

DRAFT: April 4, 2019

\$3,180,000
Maximum Principal Amount

CITY OF PITTSBURG, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
(NORTHGATE PLAZA PROJECT)
SERIES 2019

Dated June __, 2019

BOND PURCHASE AGREEMENT

City of Pittsburg, Kansas
201 West 4th Street
Pittsburg, Kansas 66762

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company (jointly and severally, the **“Purchaser”**) offers to purchase from the City of Pittsburg, Kansas (the **“Issuer”**), the above-referenced bonds, dated as provided in the Indenture (hereinafter defined), in the maximum aggregate principal amount of \$3,180,000 (the **“Bonds”**), to be issued by the Issuer, under and pursuant to Ordinance No. [_____] passed by the governing body of the Issuer on May [___], 2019 (the **“Ordinance”**) and a Trust Indenture dated as of June 1, 2019 (the **“Indenture”**), by and between the Issuer and Security Bank of Kansas City, a state banking corporation duly organized and existing under the laws of the Kansas and authorized to accept and execute trusts of the character herein set forth under the laws of the State of Kansas, with a designated corporate trust office located in Kansas City, Kansas, as Trustee (the **“Trustee”**). *Any capitalized terms used herein and not otherwise defined herein shall have the respective meanings as set forth in Section 101 of the Indenture which definitions are hereby incorporated herein by reference.*

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the Issuer’s acceptance hereof, the Issuer hereby represents to the Purchaser that:

(1) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. The Issuer is authorized pursuant to the Constitution and laws of the State of Kansas, to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Base Lease Agreement dated as of June 1, 2019 (the **“Base Lease Agreement”**), between the Issuer and Northgate Associates LLC, a Kansas limited liability company, HOK-Northgate LLC, a Kansas limited liability company, and GM-Northgate LLC, a Kansas limited liability company (jointly and severally, the **“Company”**), the Lease Agreement dated as of June 1, 2019 (the **“Lease Agreement”**), between the Issuer and the Company and any and all other agreements relating thereto. The proceeds of the Bonds shall

be used to finance the Project as defined in the Indenture and to pay for the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the Issuer or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Base Lease Agreement, the Lease Agreement, or the Indenture (collectively, the “Bond Documents”).

(b) By the Purchaser’s acceptance hereof, the Purchaser represents to the Issuer that:

(1) The Purchaser understands that the Bonds have been issued under and pursuant to the Indenture, and the Bonds are payable solely out of the rents, revenues and receipts to be derived under the Lease Agreement, which rents, revenues and receipts have been pledged and assigned by the Issuer to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

(2) The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds are not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

(3) Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of an opinion of counsel acceptable to the Issuer and the Purchaser that all registration and disclosure requirements of the U.S. Securities and Exchange Commission and all other appropriate federal and Kansas securities laws and the securities laws of any other applicable state are complied with; provided, that the collateral assignment of the Bonds to the holder of the Mortgage (as defined in the Lease) shall be permitted.

(4) The Purchaser is familiar with the operations of the Company, has been furnished such information from the Company as requested by the Purchaser and is fully aware of the terms and risks associated with purchasing the Bonds in order for the Purchaser to make an informed investment decision with respect to the purchase of the Bonds.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The interest rate on the Bonds shall be 2.00% per annum.

The maturity date of the Bonds shall be July 1, 2021.

The maximum principal amount of the Bonds is \$3,180,000.

The Bonds shall be sold to the Purchaser by the Issuer on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be deposited in the Project Fund as provided in **Section 502** of the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in **Section 4.4** of the Lease Agreement. From time to time after the Closing Date, the Purchaser may make additional payments with respect to the Bonds (“**Additional Payments**”) to the Trustee under the Indenture, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$3,180,000.

As used herein, the term “**Closing Date**” shall mean June [], 2019, or such other date as shall be mutually agreed upon by the Issuer and the Purchaser; the term “**Closing Price**” shall mean that certain amount specified in writing by the Purchaser and agreed to by the Issuer as the amount required to fund the initial disbursement from the Project Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance and in the Bond Documents authorized thereby and the Bonds shall be subject to redemption as set forth therein. The Bonds shall be transferable only in the manner provided for in the Indenture. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$3,180,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the Issuer and the Trustee, including any member, officer, official or employee of the Issuer or of the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the “**Indemnified Parties**”), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any violation or failure to comply with any federal or state securities laws in connection with the Bonds; provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Party’s negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Company or the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The Purchaser's obligations hereunder shall be subject to the due performance by the Issuer of the Issuer's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the Issuer's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance and the Bond Documents and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The Issuer shall confirm on the Closing Date by a certificate that at and as of the Closing Date the Issuer has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the Issuer or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof. The form and substance of such certificate shall be satisfactory to the Purchaser and the Company.

(c) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C. as bond counsel to the Issuer (the "**Bond Counsel**"), in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the Issuer in writing sent by first class mail, facsimile or reputable overnight delivery service, of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds from Bond proceeds or otherwise, including, but not limited to any fees of the Issuer, Bond Counsel, Trustee and the Board of Tax Appeals.

SECTION 8. NOTICE

Any notice or other communication to be given to the Issuer under this Agreement may be given by mailing or delivering the same in writing to the Issuer at the notice address contained in the Indenture; and any notice or other communication to be given to the Purchaser under this Agreement may be given by delivering the same in writing to Purchaser at 700 West 47th Street, Suite 200, Kansas City, Missouri 64112; 26371 West Cedar Niles Circle, Olathe, Kansas 66061; and PO Box 1945, Grand Junction, Colorado 81502; and any notice or other communication to be given to the Company under this Agreement may be given by delivering the same in writing at the notice address contained in the Indenture.

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Kansas and may be assigned by the Purchaser with the written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 10. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 11. ELECTRONIC STORAGE.

The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of page intentionally blank.]

Very truly yours,

Dated as of the date set forth above.

Collectively, as PURCHASER:

NORTHGATE ASSOCIATES LLC,
a Kansas limited liability company

By: _____
Name: Stephen Block
Its: Manager

Collectively, as COMPANY:

NORTHGATE ASSOCIATES LLC,
a Kansas limited liability company

By: _____
Name: Stephen Block
Its: Manager

HOK-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Ed Hokanson
Its: Manager

HOK-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Ed Hokanson
Its: Manager

GM-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Gene C. Malone, Jr.
Its: Manager

GM-NORTHGATE LLC,
a Kansas limited liability company

By: _____
Name: Gene C. Malone, Jr.
Its: Manager

Dated as of the date set forth above.

CITY OF PITTSBURG, KANSAS

By: _____
Mayor

(Seal)

ATTEST:

By: _____
City Clerk



DEPARTMENT OF PUBLIC WORKS

201 West 4th Street · Pittsburg KS
66762

(620) 231-4170

www.pittks.org

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: May 22, 2019

SUBJECT: Memo Agenda Item – May 28, 2019
Petition and Authorizing Resolution No. 1221
Sidewalk and Curb Improvements at 311 South Broadway

During discussions regarding improvements to the existing sidewalk and curb with the owner of 311 South Broadway, the owner requested that the work being done through the City's 50/50 Sidewalk program be assessed to the property. The property owner has signed a petition for their share, which will be assessed to the property over a seven-year period.

Once the Authorizing Resolution is approved, the City's on-call concrete contractor will plan and prepare for construction of the project.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, May 28, 2019. Action necessary is for the Commission to accept or deny the Petition and approve or disapprove the Authorizing Resolution and, if approved, authorize the Mayor to sign the resolution on behalf of the City of Pittsburg.

If you have any questions regarding this matter, please do not hesitate to contact me.

Attachment: Resolution No. 1221
Petition Authorizing Resolution
Assessment Cost
Map

Cc: Tammy Nagel, City Clerk
Project File
Memo File

(Published in The Morning Sun on _____)

RESOLUTION NO. 1221

A RESOLUTION AUTHORIZING THE CONSTRUCTION OF A SIDEWALK REPLACEMENT AND CURBING IN FRONT OF 311 SOUTH BROADWAY, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS, that the following findings as to the advisability of constructing a Sidewalk and Curb Replacement in front of 311 South Broadway, in the City of Pittsburg, Kansas, are hereby made, to-wit:

Section 1: It is advisable, necessary, and in the public interest to construct approximately fifty lineal feet (50') of Sidewalk and fifty feet (50') of Curb in front of 311 South Broadway, in the City of Pittsburg, Kansas, with necessary grading, seeding, concrete work, preliminary engineering, construction engineering, and all cost incidental thereto.

Section 2: A petition signed by the owner of the property to be assessed requesting construction of the improvement and that a finding of advisability and necessity be made without notice and hearing has been filed with the City Clerk. Upon review of said petition it has been found that the improvement district to be assessed does not exceed the improvement district proposed in the petition and that the petition is sufficient. Due to the provisions of K.S.A. 12-6a04, notice of hearing on the advisability of the improvement is not necessary.

Section 3: The costs of said improvement provided for in Section 1 hereof is estimated to be \$3,625.00.

Section 4: The costs of said improvement shall be assessed against the parcel of real estate set forth herein below, without regard to the improvements thereon.

Section 5: The share of the total actual costs of the improvement to be assessed against the improvement district shall be assessed against the land lying within an improvement district described as follows:

	<u>Property Address</u>	<u>Legal Description</u>
Tract 1:	311 South Broadway	Rogers Company 2 nd Addition, Block 4, Lot 4

Section 6: The share of the total actual costs of the improvement, including preliminary engineering, construction, construction engineering, and incidental costs thereof, to be paid by the City shall be fifty percent (50%) and the share to be assessed against the Improvement District shall be fifty percent (50%) thereof.

Section 7: The City Engineer or consulting engineers shall prepare plans and specifications for said improvement and a preliminary estimate of the total project cost therefore is \$3,625.00.

Section 8: The advisability of the improvement set forth above is hereby established as authorized by K.S.A. 12-6a-04 and 12-6a-06.

Section 9: Be it further resolved that the above described improvements are hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this Resolution.

Section 10: That this Resolution is intended to be a declaration of the City's official intent to reimburse itself from the payment of the assessments and that the improvements will be paid for from the Utility Department budget. A copy of this Resolution is available for inspection by the public at any time during all business hours in the office of the City Clerk, 201 West 4th Street, Pittsburg, Kansas.

Section 11: That the City Clerk shall make proper publication of this Resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

ADOPTED BY THE GOVERNING BODY this 28th day of May, 2019.

Mayor – Patrick O'Bryan

ATTEST:

City Clerk – Tammy Nagel

(SEAL)

PETITION

TO: THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS:

We, the undersigned being owners of record of real property liable for assessment for the following proposed improvements:

- (a) To provide public Sidewalk and Curb replacement for Lot 4 in Block 4 of the Rogers Company 2nd Addition, by the removal and replacement of 50 feet of 5 foot wide Sidewalk together with 50 feet of Curb, All in the City of Pittsburg, Crawford County, Kansas.

We hereby propose that such improvements be made in the manner provided by Article 6a of Chapter 12 of Kansas Statutes annotated, as amended.

In support of said petition, the undersigned set forth the following information, to-wit:

- 1. The total estimated or probable cost of such improvement is \$3,625.00.
- 2. The extent of the Improvement District to be assessed is described as follows:

Lot 4 in Block 4 of the Rogers Company 2nd Addition

- 3. The proposed method of assessment is –
Costs assigned to the Improvement District shall be assessed equally against each property within the Improvement District, without regard to the building improvements thereon.

- a) Costs shall be assessed to the following tract

	<u>Property Address</u>	<u>Legal Description</u>
Tract 1:	311 S. Broadway Street	Rogers Company 2 nd Addition, Block 4, Lot 4

- 4. The proposed apportionment of the total cost of said improvements between the Improvement District and the City at Large shall be as follows:
 - (a) The Improvement District shall pay for Fifty Percent (50%) of the total cost of the project including preliminary engineering, construction, construction engineering, financing and all incidental costs justly incidental thereto.
The estimated total cost to the Improvement District equals \$1,812.50, more or less.
 - (b) The City at Large shall pay for Fifty Percent (50%) of the total cost of the project including preliminary engineering, construction, construction engineering, financing and all incidental costs justly incidental thereto.

Said share of the total cost to the City at Large equals \$1,812.50, more or less.

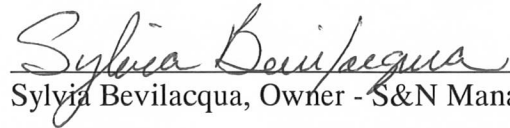
5. The signers of this Petition are the owners of 100% of the property proposed to be included in the Improvement District.
6. This Petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto.
7. The estimated or probable cost payable by the City at Large does not exceed 95 percent of the total estimated cost of the improvements.

We, further request that such improvements be made without notice and hearing as provided in Article 6a, of Chapter 12 of Kansas Statutes annotated, as amended and the undersigned are informed that their name or signature to this petition may not be withdrawn after the Governing Body commences consideration of said petition or later than seven (7) days after filing of said petition, whichever occurs first.

Respectfully Submitted,

Dated at Pittsburg, Kansas, this 3 day of May, 2019.

Owner of Lot 4, Rogers Company 2nd Addition, Block 4: S&N Management, LLC


Sylvia Bevilacqua, Owner - S&N Management, LLC.

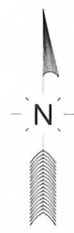
**City of Pittsburg, Kansas
Sidewalk Special Assessment**

Sylvia Bevilacqua - 311 S. Broadway

Special Assessment Schedule

No.	Due Date	Payment Due
1	12/20/2019	280.05
2	12/20/2020	280.05
3	12/20/2021	280.05
4	12/20/2022	280.05
5	12/20/2023	280.05
6	12/20/2024	280.05
7	12/20/2025	280.07
		1,960.37

Rose



Broadway

Euclid

IMPROVEMENT DISTRICT LINE

311 S. Broadway

New Sidewalk & Curb/Gutter Improvements

Kansas

IMPROVEMENT DISTRICT - SIDEWALK & CURB/GUTTER