

**RESOLUTION NO. 2015-01**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF REAL ESTATE PURCHASE AGREEMENT BETWEEN KATHLEEN A. BRYANT, AND THE CITY OF BASEHOR, LEAVENWORTH COUNTY, KANSAS**

**WHEREAS**, Kathleen A. Bryant ("Seller") is the owner of certain real property located in the City of Basehor, Leavenworth County, Kansas (the "Property"); and

**WHEREAS**, the City desires to purchase from Seller the Property on the terms and conditions more fully set out in the Real Estate Purchase Agreement, attached as Exhibit A.

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

**Section 1.** That the Governing Body approves and hereby authorizes the Mayor to execute the Real Estate Purchase Agreement, attached as Exhibit A.

**Section 2.** That this resolution shall become effective upon passage.

**ADOPTED** by the Governing Body this 20<sup>th</sup> day of January, 2015.

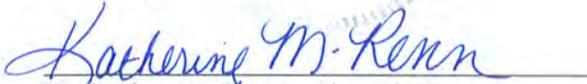
**SIGNED** by the Mayor this 20<sup>th</sup> day of January, 2015.

**SEAL**



  
David K. Breuer, Mayor

**ATTEST:**

  
Katherine M. Renn, City Clerk

**APPROVED AS TO FORM:**

  
Shannon M. Marcano, City Attorney

**EXHIBIT A**  
Real Estate Purchase Agreement

**REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into as of this 20<sup>th</sup> day of JANUARY, 2014 (the "Effective Date") by and between **KATHLEEN A. BRYANT**, (the "Seller") and **THE CITY OF BASEHOR, KANSAS**, (the "City").

WITNESSETH:

WHEREAS, the Seller is the owner of certain real property located in the City of Basehor, Leavenworth County, Kansas (the "Property"); and

WHEREAS, the City desires to purchase from Seller the Property hereinafter described on the terms and conditions hereinafter more fully set out.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and the City agree as follows:

**ARTICLE I**

**The Property**

1.1 Subject to the terms and provisions of this Agreement, Seller agrees to convey the Property to the City, and the City agrees to purchase from Seller, all of the following described Property:

(a) The land described on Exhibit A and depicted on Exhibit B, both as attached hereto (the "Land").

**ARTICLE II**

**Purchase Price**

2.1 Purchase Price. The total purchase price for the Property shall be \$80,000 ("Purchase Price"), which Purchase Price is due and payable by the City to Seller in cash, federal funds, or other immediately available funds at the Closing (hereinafter defined).

**ARTICLE III**

**Title and Survey**

3.1 Title Binder and UCC Searches. The City shall, at its sole cost and expense, obtain a current Commitment for a standard ALTA Owner's Policy of Title Insurance for the

Property ("Title Binder") from the Old Republic National Title Insurance Company by its agent Kansas Secured Title- Basehor at 1106 North 155<sup>th</sup> Street, Suite B, Basehor, Kansas, 66007 (the "Title Company"), together with copies of all documents identified on the Title Binder as exceptions to the title to the City. The Title Binder shall describe the Property, name the City as the party to be insured thereunder and commit to insure the City with indefeasible, good and marketable title in an amount as it determines in its sole discretion. The Title Binder shall list and identify by reference to volume and page, where recorded, all easements, rights-of-way and other instruments or matters affecting title to the Property. The City shall pay for the cost of the ALTA Owner's Policy at Closing. Any additional coverage in the form of endorsements (which may take the form of affirmative insurance covering, for example, restrictive covenants, encroachments, etc.) the City may desire shall be at the City's cost. With regard to the standard printed exceptions and other common exceptions generally included in Title Binders, (a) there shall be no exception for "any lien, or right to a lien, for services, or material heretofore or hereafter furnished, imposed by law and not shown by the public records," and (b) the exception for ad valorem taxes or special assessments shall reflect only taxes and special assessments for the year of Closing and shall be annotated "Not yet due and payable," (c) the exception for survey or "encroachments, overlaps, boundary line disputes, and other matters which would be disclosed by an accurate survey and inspection of the premises" shall be deleted, (d) there shall be no exception for "easements or claims of easements not shown by the public records" or the like, and (e) there shall be no exception for "rights of parties in possession not shown by the public records." In addition, all mortgages and other financial liens shall be satisfied at Closing (except as to Closing year taxes and installments of special assessments). The City may obtain at the City's sole cost and expense within fifteen (15) days from the date hereof, Uniform Commercial Code Financing Statement (UCC 1) search requests on Seller from the county and state in which the property is located and the county and state where Seller is located ("UCC Searches").

3.2 Existing Survey, Title and Engineering Reports. Seller shall within five (5) business days of the Effective Date deliver to the City a copy of any title commitments or policies, and engineering or physical condition reports pertaining to the Property. The City may, at its sole cost and expense, as soon as possible, obtain an ALTA survey of the Property (the "Survey").

3.3 Review of Title and Survey. The City shall have a period of fifteen (15) days commencing on its receipt of the Title Binder and ALTA Survey completed by the City (the "Title Review Period") in which to notify Seller of any objections the City has to any matters shown or referred to in the UCC Searches, Title Binder, or the Survey. Any title encumbrances or exceptions which are set forth in the Title Binder, UCC Searches or the Survey and to which the City does not object within such period (as to the Title Binder, UCC Searches and the Survey) shall be deemed to be permitted exceptions to the status of Seller's title ("Permitted Exceptions"). None of the exceptions prohibited in Section 3.1 hereof shall be Permitted Exceptions. With regard to items to which the City does object within such period, Seller shall notify the City no later than five (5) business days after the expiration of the Title Review Period as to whether it will agree to cure the objections at Closing. If Seller notifies the City that it is unable or unwilling to cure such objections by Closing as set forth above, the City may at its option at any time prior to Closing waive the objections not cured (in which event such waived objections will be Permitted Exceptions), or terminate this Contract, provided further, as to any

recorded lien which Seller is unable to cure at or prior to Closing, such lien shall be satisfied, at Closing. If any new Title or Survey issues arise prior to Closing, Seller shall immediately correct same to the City's satisfaction.

3.4 Current Tenant(s). Seller agrees that any and all current tenants shall be relocated from the property prior to closing.

3.5 Existing Interests. Seller will cooperate with City regarding the termination or resolution to City's satisfaction, at City's sole cost and expense:

(a) Blanket Easement(s) held by Williams Pipeline Company, Wilmington Trust and/or Williams Telecom Company.

(b) Water Easement held by Suburban Water Company.

## ARTICLE IV

### Environmental Audit

4.1 Environmental Audit. The City may commence at its cost a comprehensive environmental audit ("Environmental Audit") of the Property by an independent environmental consultant ("Consultant") chosen by the City to identify Adverse Environmental Conditions, if any, affecting the soil, air, surface waters and ground water in, on or around the Property, the work required to remedy any such Adverse Environmental Conditions ("Remedial Work") and a reasonable good faith estimate of the cost of the Remedial Work ("Estimated Cost"). The Consultant shall furnish a copy of the Environmental Audit Report, (which shall include the Remedial Work and the Estimated Cost) to both the City and Seller promptly after completion of the Environmental Audit. The scope and form of the Environmental Audit shall be in all respects satisfactory to the City, in its reasonable discretion, but neither the City nor its consultant is permitted to conduct any test which would cause damage to the Property (which is not repaired by the City). Seller agrees to provide the City and its Consultant with access to the Property for purposes of conducting the above Environmental Audit at all reasonable times. The City hereby indemnifies and holds Seller harmless from and against any loss, damage, injury, claim or cause of action Seller may suffer or incur as a result of the City's inspections of the Property; provided that this indemnity shall not be construed to include Seller's losses resulting from the City's discovery of Adverse Environmental Conditions or resultant Property value loss from same.

4.2 Definitions. As used herein: The term "Hazardous Materials" shall mean and include the existence in any form of

(a) (i) polychlorinated biphenyls; (ii) asbestos or asbestos containing materials; (iii) urea formaldehyde foam insulation; (iv) oil, gasoline or other petroleum products (other than in vehicles operated in the ordinary course of business); (v) pesticides and herbicides; and (vi) any other chemical, material or substance to which exposure is prohibited, limited or regulated by any Environmental Laws and any federal, state, county, regional or local authority or which, even if not so regulated, is known to

pose or suspected of posing a threat to the health or safety of those coming into contact with such materials or substances.

(b) The term "Environmental Laws" shall mean any federal, state or local laws, statutes, ordinances, regulations or policies relating to the environment, health and safety, any hazardous materials (including without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions applicable to the Property, including, without limitation, soil, subsurface and ground water conditions.

(c) The term "Adverse Environmental Conditions" shall mean conditions existing or which existed in the past on or in the vicinity of the Property owned or operated by the Seller with respect to the air, soil, surface waters, ground waters or stream sediments. Included, but not limited thereto, are conditions which may pose a threat to human health or the environment, may require remedial action and/or may result in nonparties to this Contract including, without limitation, governmental entities.

## ARTICLE V

### Information, Representations and Warranties

5.1 Information. Seller shall not later than five (5) business days after the Effective Date hereof, deliver to the City legible, accurate and complete copies of the following (the "Delivery Items"):

(a) The most recent ad valorem tax statements from all taxing authorities having jurisdiction over the Property for the prior year and to the extent the current year's bills are not available, the current valuation notice.

(b) A list and copies of all leases, contracts and agreements affecting the Property or any portion thereof and a summary of all maintenance obligations related to the Property as required in the Declaration or otherwise.

(c) Existing site plans, surveys, soil and substrata studies, architectural renderings environmental reports, engineering plans and studies, landscape plans and other plans, diagrams or studies of any kind, if any, in Seller's possession, which relate to the Land or the Improvements, together with all documents relating or pertaining to all warranties and guaranties of construction.

(d) Copies of all documents and records and any other information in Seller's possession or control (or available to Seller) or of which Seller has actual notice concerning any investigation, study, report, inquiry, lawsuit or proceeding pertaining to the existence of Hazardous Materials affecting the Property or affecting properties adjacent to or in the vicinity of the Property. Such documents, records and information include without limitation, environmental audits, environmental risk assessments or site assessments, documentation regarding off-site disposal of Hazardous Materials, spill control plans, and environmental agency and third-party reports and investigations, claims, citations, pleadings, correspondence or other communications in Seller's

possession or control. During the period from the Effective Date until the Closing, Seller shall have an ongoing obligation to provide to the City copies of any such additional documents which come into the possession or control or become available to Seller subsequent to the date hereof within five (5) business days of any such document, record or information becoming available to Seller.

The City and its authorized representatives shall have the right to inspect the Property during reasonable business hours (with advance notice to Seller and opportunity for Seller or Seller's representatives to accompany the City). Seller thereby agrees to give the City its reasonable cooperation and to confirm when requested by the City the accuracy of the information relied upon by the City.

5.2 Representations and Warranties of Seller. Seller hereby represents and warrants as of the date hereof and as of the Closing Date that:

(a) To Seller's actual knowledge, there is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any written notice, and has no actual knowledge, that any such proceeding is contemplated.

(b) There are no leases, occupancy agreement, or contracts outstanding which affect any portion of the Property or its operation, other than those which will be supplied by Seller pursuant to Section 5.1 hereof.

(c) Seller has received no notice that the continued ownership, operation, use and occupancy of the Property violates any zoning, building, health, flood control, fire or other law, ordinance, order or regulation or any restrictive covenant.

(d) To Seller's actual knowledge, no work has been performed or is in progress by Seller at and no materials have been furnished to the Property or any portion thereof, which might give rise to mechanic's, materialman's or other liens against the Property or any portion thereof, or, if any has, same will be satisfied at or prior to Closing.

(e) To Seller's actual knowledge, Seller is not prohibited from consummating the transaction contemplated in the Contract, by any law, regulation, agreement, instrument, restriction, order or judgment.

(f) Seller is duly organized, validly existing and in good standing under the laws of the state of its origin. Seller has full right, title, authority and capacity to execute and perform this Contract and to consummate all of the transactions contemplated herein, and the individual of Seller who executes and delivers this Contract and all documents to be delivered to the City hereunder is and shall be duly authorized to do so.

(g) There are no adverse parties in possession of the Property or any part thereof and no parties in possession thereof except Seller and no party has been granted any license, lease, or other right relating to the use or possession of the Property except as otherwise provided herein.

(h) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or to Seller's actual knowledge, pending against Seller or the Property.

(i) There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof.

(j) Seller is not a foreign person selling property as described in the Foreign Investment in Real Property Tax Act ("FIRPTA") and agrees to deliver an affidavit at Closing reflecting that Seller is not such a foreign person and provide Seller's tax identification number ("Tax Affidavit").

(k) To Seller's actual knowledge, Seller has complied with all subdivision or lot split requirements necessary for Seller's conveyance of the Property to the City.

(l) To Seller's actual knowledge, there are no actions, suits, claims, proceedings or causes of action which are pending or have been threatened or asserted in writing against, or are affecting, Seller or the Property or any part thereof in any court or before any arbitrator, board or governmental or administrative agency or other person or entity which might have a material adverse effect on the Property or any portion thereof.

(m) Seller is not aware of any pending or threatened rezoning of all or any part of the Property.

Any representations made to the knowledge of Seller (whether "best" or "actual") shall include the knowledge of Seller and its officers and employees. All of Seller's warranties and representations shall survive any inspection or investigation made by or on behalf of the City and shall not merge with delivery of the General Warranty Deed specified in Section 7.2(a) but survive delivery of said deed.

## ARTICLE VI

### Conditions Precedent to City's Obligation to Close

6.1 The City's obligation to consummate the transactions contemplated hereunder is conditioned upon satisfaction of each of the following conditions at or prior to the Closing (or such earlier date as is specified with respect to a particular condition):

(a) The condition of the Property shall meet the approval of the City, in its sole judgment and discretion, upon on-site inspections of the Property to be made by the City or its representative during a period of sixty (60) days commencing on the Effective Date (the "Inspection Period"). Inspections of the Property by the City or its representatives are to be conducted in such a manner as not to physically damage the Property or unreasonably interfere with the usual operation of the Property by Seller. If, during the course of its inspection, the City should conclude that the Property or any

component thereof is not satisfactory to the City or does not meet standards desired by the City in its sole discretion, then the City may, for any of the above reasons or for no reason, terminate this Contract by written notice to Seller within the Inspection Period. If the City fails to notify Seller in writing of its disapproval within the Inspection Period, this condition shall be deemed satisfied and waived.

(b) The City shall be satisfied with the title and survey of the Property.

(c) The interests described in Section 3.5 shall be resolved to City's satisfaction.

(d) None of the representations and warranties of Seller set forth in Article V hereof shall be untrue or inaccurate in any material respect. Seller will provide City with an update of its Article V representations and warranties at Closing.

In the event that all of the above conditions are not satisfied at or prior to the Closing (or such earlier date as is specified with respect to a particular condition), the City may terminate this Contract by written notice to Seller and shall have no further obligations hereunder.

## ARTICLE VII

### Closing

7.1 Time and Place of Closing. Provided that all of the conditions of this Contract shall have been satisfied or waived prior to or on the Closing Date (herein so called), the Closing (herein so called) of this transaction shall take place at the Title Company within ten (10) days following the expiration of the Inspection Period.

7.2 Events of Closing. At the Closing:

(a) Seller shall:

(i) Deliver to the City a General Warranty Deed in form reasonably acceptable to the Title Company, the City and Seller, duly executed and acknowledged by Seller, conveying to the City the Land in indefeasible fee simple free and clear of any lien, encumbrance or exception other than the Permitted Exceptions.

(ii) Deliver the Policy of Title Insurance described in Article III hereof issued by the Title Company conforming to the requirements of Article III above insuring the City's title in indefeasible fee simple containing no exceptions other than the Permitted Exceptions.

(iii) Deliver possession of the Property (subject only to the Permitted Exceptions).

(iv) Deliver such evidence of the authority and capacity of Seller and its representatives as the Title Company may reasonably require.

- (v) Deliver the Tax Affidavit.
  - (vi) Deliver the updated Certificate of Representations and Warranties.
  - (vii) All other documents reasonably necessary or appropriate to consummate this transaction.
- (b) The City shall:
- (i) Deliver to Title Company such evidence of the authority and capacity of the City and its representatives as Seller or the Title Company may reasonably require.

7.3 Expenses. The City shall pay the escrow fee charged by the Title Company, the premium for the Owner's Policy of Title Insurance, the cost of obtaining the Survey, if any, its proportionate share of the prorations as set forth in Section 7.4 hereof, the cost of any endorsements to the Owner's Title Policy, the Environmental Audit, the recording fees for its Warranty Deed and its own attorneys' fees. Seller shall pay its proportionate share of the prorations as set forth in Section 7.4 hereof and its own attorneys' fees. Except as otherwise provided in this Section, all other expenses hereunder shall be paid by the party incurring such expenses.

7.4 Prorations.

(a) The following shall be apportioned with respect to the Property as of 12:01 a.m., Basehor, Kansas time, on the day of Closing, as if the City were vested with title to the Property during the entire day upon which Closing occurs:

- (i) any taxes; and
- (ii) any assessments.

(b) Notwithstanding anything contained in the foregoing provision:

(i) Any taxes paid at Closing shall be prorated based upon the amounts actually paid.

(c) In connection with the proration of real and property ad valorem taxes, if actual tax figures for the year of Closing are not available at the Closing Date, the proration shall be based upon the tax figures from the preceding year. The parties agree that such proration will be readjusted between the parties, outside of Closing, if necessary, based upon the final tax bill for the year in which Closing occurs. Seller shall, on or before the Closing Date, furnish to the City and the Title Company all information necessary to compute the prorations provided for in this Section.

## ARTICLE VIII

### Damage to Property and Condemnation

8.1 Seller agrees to give City prompt notice of any casualty affecting the Land or Improvements between the date hereof and the Closing Date or of any actual or threatened taking or condemnation of all or any portion of the Land or Improvements. If prior to the Closing there shall occur:

- (a) damage to the Property caused by casualty, or
- (b) the taking or condemnation of all or any portion of the Property,

then in any such event the City may at its option terminate this Contract by written notice to Seller within twenty (20) days after City has received the notice referred to above or at the Closing, whichever is earlier and shall no further obligations hereunder. If the City does not so elect to terminate this Contract, then the Closing shall take place as provided herein without abatement of the purchase price, and there shall be assigned to the City at the Closing all of Seller's interest in and to all insurance proceeds or condemnation award and further, if same be insufficient to pay the actual loss, Seller will pay such deficiency to the City on demand.

## ARTICLE IX

### Termination, Default and Remedies

9.1 Permitted Termination. If this Contract is terminated by either party pursuant to a right expressly given it to do so hereunder ("Permitted Termination"), then neither party shall have any obligations going forward. If Closing has not occurred within 90 days of the Effective Date, either party may terminate this Contract, or this Contract may be extended as agreed upon by the parties.

9.2 Default by Seller. Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

- (a) any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect; or
- (b) Seller shall fail to meet, comply with or perform any material covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination and fails to cure such default within ten (10) days of written notice of such default from the City.

If Seller defaults hereunder, the City may, at its option, do either of the following as its sole and exclusive remedy:

- (i) terminate this Contract by written notice delivered to Seller at or prior to the Closing, whereupon the this Contract shall terminate and neither party shall have any rights or obligations hereunder; or

- (ii) enforce specific performance of this Contract against Seller.

9.3 Attorney's Fees. If it shall be necessary for either the City or Seller to employ an attorney to enforce its rights pursuant to this Contract because of the default of the other party, the defaulting party shall reimburse the nondefaulting party for reasonable attorney's fees.

## ARTICLE X

### Interim Responsibilities of Seller

10.1 Seller agrees that during the period between the date of this Contract and the Closing Date and except as contemplated in Sections 3.4 and 3.5:

(a) Seller shall maintain the Property in the same fashion as has been Seller's custom and shall keep and perform all obligations of owner of the Property under any Permitted Exceptions, applicable laws and any mortgage(s) applicable to the premises.

(b) Seller shall not enter into, amend, waive any rights under, terminate or extend any document or instrument affecting title to the Property without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Seller shall not change the grade or other physical characteristics of the Property in any respect unless the City shall have given its prior written approval to such change.

(d) Seller shall not enter into any agreement with respect to the leasing, operation or maintenance of any portion of the Property which will survive Closing, without the prior written consent of the City.

(e) Seller will maintain Seller's existing insurance coverage with respect to the Property from the date hereof through the Date of Closing or earlier termination of this Contract.

All risk of loss shall be borne by Seller until acceptance by the City of delivery of Seller's deed at the Closing.

## ARTICLE XI

### Brokerage Commission

11.1 Each party represents that it has not engaged a broker or realtor with respect to this Contract or the transaction contemplated hereto. Each party agrees to indemnify and hold the other party harmless from any loss, liability, damage, cost or expense (including, without limitations reasonable attorney's fees) actually paid or incurred by such party by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any party

claiming by, through or under the indemnifying party, to the extent permitted by the laws of the State of Kansas.

## ARTICLE XII

### Miscellaneous

12.1 No Assumption of Seller's Liabilities. The City is acquiring only the Property from Seller and is not the successor of Seller. The City does not assume or agree to pay, or indemnify Seller or any other person or entity against, any liability, obligation or expense of Seller or relating to the Property in any way except only to the extent, if any, herein expressly and specifically provided.

12.2 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed delivered upon *both* (i) deposit by express mail or with a nationally recognized overnight courier for next business day delivery; and (ii) posting by fax with confirmed electronic receipt and addressed to the addressee at its address set forth below or at such other address as such party may have specified theretofore by notice delivered in accordance with this Section:

To Seller: Kathleen A. Bryant  
21275 Golden Rd.  
Linwood, KS 66052

If to the City: City of Basehor, Kansas  
Attn: City Clerk  
PO Box 406  
Basehor, KS 60007

With a Copy to: White Goss  
4510 Belleview Avenue, Suite 300  
Kansas City, MO 64111-3538  
Attn: Shannon M. Marcano, Esq.  
Fax: (816) 753-9201

12.3 Survival. All warranties, representations and agreements contained herein or arising out of the sale of the Property by Seller to the City shall survive delivery of Seller's Warranty Deed and the Closing hereof.

12.4 Governing Law, Venue. The laws of the State of Kansas shall govern the validity, enforcement, and interpretation of this Contract.

12.5 Integration; Modification; Waiver. This Contract constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to the Property. This Contract cannot be modified, or any of the terms hereof waived, except by

an instrument in writing (referring specifically to this Contract) executed by the party against whom enforcement of the modification or waiver is sought.

12.6 Counterpart Execution. This Contract may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

12.7 Headings, Construction. The headings which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

12.8 Invalid Provisions. If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

12.9 Binding Effect. This Contract shall be binding upon and inure to the benefit of Seller and the City, and their respective heirs, personal representatives, successors and assigns. The City may assign its rights under this Contract to an affiliate but will not be relieved of its duties without Seller's written consent. Upon acceptance of any assignment by the assignee and the assumption of the City's obligations hereunder, the City shall be relieved of all duties and obligations hereunder. Seller shall not assign its interest hereunder without the prior written consent of the City, except that Seller may assign its interest in this Contract in connection with a conveyance of the Property to any entity owned or controlled by Seller, provided and so long as (i) the transfer of the Property is expressly subject to this Contract and any such transferee assumes in writing the obligations of Seller hereunder and acknowledges and agrees that it is bound by and subject to this Contract with respect to the Property, and (ii) no such transfer shall release Seller of its primary liability hereunder. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the parties hereto and their respective heirs, personal representatives, successors and assigns, any rights or remedies under or by reason of this Contract.

12.10 Further Acts. In addition to the acts recited in this Contract to be performed by Seller and the City, Seller and the City agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

12.11 Date of Contract. The date of this Contract shall for all purposes be the date of the signature of the last party to sign this Contract.

12.12 Indemnity as to Lawsuits. Seller agrees to indemnify and hold the City harmless of and from any and all liability, loss, damage or expense (including attorneys' fees) as a result of any action, suit, proceeding, claim or lien by a third party affecting the Land or Improvements, or any portion thereof, or any leases, contracts and/or services related thereto, in relation to which the facts which give rise to such action, suits or proceedings arose or occurred prior to the Closing Date to the extent permitted by the laws of the State of Kansas. The City agrees to indemnify and hold Seller harmless of and from any and all liability, loss, damage or expense (including attorney's fees) as a result of any action, suit, proceeding, claim or lien by a third party affecting the Land or Improvements, or any portion thereof, or any leases, contracts and/or services related thereto, in relation to which the facts which give rise to such action, suits or proceedings arose on or occurred subsequent to the Closing Date to the extent permitted by the laws of the State of Kansas. The provisions of this section shall survive closing. Notwithstanding the foregoing, this indemnity shall not apply to claims brought by third parties under the Environmental Laws against the City so that the City will not have a contractual claim hereunder against Seller, but this provision shall not affect the City's rights against Seller under the statutes, laws, ordinances, rules, regulations and common law applicable to any such third-party claim.

12.13 Confidentiality. Seller and the City agree that the terms and conditions of this Contract shall not be disclosed by them to any other person or entity other than legal counsel, the Title Company or Seller's or the City's accountants prior to Closing without the prior written consent of the other, other than for the purpose of carrying out this Contract. The parties covenant and agree that any attorneys and accountants to whom the terms of this Contract are communicated shall be obligated in like manner not to communicate the terms and provisions hereof to others. The City agrees to keep all of the information delivered to it by Seller confidential and to disclose it to only those consultants necessary to perform the City's obligations under the Contract. The City covenants and agrees that any party to whom such information is disclosed shall be obligated in like manner not to communicate the terms and provisions of the information to others. If this transaction fails to close for any reason other than Seller's default, the City shall return all of the information to Seller immediately.

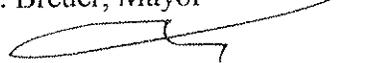
*[Signature page to follow.]*

IN WITNESS WHEREOF, the undersigned have caused this Contract to be executed on the dates set forth below.

Kathleen A. Bryant

By: Kathleen A. Bryant  
Name: Kathleen A. Bryant  
Its: \_\_\_\_\_

CITY OF BASEHOR, KANSAS

By: David K. Breuer  
David K. Breuer, Mayor  


**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

A tract of land in the Southeast 1/4 of Section 3, Township 11 South, Range 22 East more fully described as follows:

Beginning at the Northeast corner of said Southeast 1/4; thence South 00°00'00" East for a distance of 300.00 feet along the East line of said Southeast 1/4; thence South 89°17'19" West for a distance of 436.00 feet; thence North 00°0'00" East for a distance of 300.00 feet to the North line of said Southeast 1/4; thence North 89°17'19" East for a distance of 436.00 feet along said North line to the point of beginning, less any part thereof taken for road purposes.

# EXHIBIT B

## PROPERTY DEPICTION

