REQUEST TO CALL A SPECIAL COUNCIL MEETING

November 2, 2011

The Honorable Terry Hill
Mayor of Basehor, Kansas

We, the undersigned Council Members of the City of Basehor, Kansas, hereby respectfully request to call a Special Meeting of the City Council, to be held at Basehor City Hall, 2620 N. 155th Street, Basehor, Kansas, on Monday, November 7, 2011, at 6:50 p.m. for the purpose of authorizing the Mayor to execute an economic development agreement between the City of Basehor and Orscheln Farm and Home providing for certain incentives to encourage and assist in developer locating and operating its retail business within the city limits.

Signed:

Dennis Mertz, City Council President

David Breuer

Iris Dysart

Fred Box

Travis Miles

Attest:

Corey Swisher, City Clerk

City of Basehor

Agenda Item Cover Sheet

Agenda Item No. 1

Topic: Orscheln Economic Development Agreement and Ordinance

Action Requested: Approve the Economic Development Agreement and Ordinance between the City of Basehor and Orscheln Farm and Home, LLC.

Narrative: In the event Orscheln consummates the purchase agreement and purchases the property, the city hereby agrees to abate 95% of all of the city taxes from the date of consummation and closing of the purchase agreement through the end of December 31, 2019. Orschlen shall be required to pay only 5% of the city taxes assessed and owed for the property during the abatement term.

Presented by: Lloyd Martley

Administration Recommendation: Approved as recommended

Committee Recommendation: N/A

Attachments: Development agreement and ordinance

Projector needed for this item?

No

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made this _____ day of _____, 2011, by and between the City of Basehor, Kansas ("**City**"), and Orscheln Farm and Home LLC, a Missouri limited liability company ("**Orscheln**").

WHEREAS, the City desires to facilitate and encourage economic development within the City; and

WHEREAS, in furtherance of this public purpose the City recognizes the need to attract a tenant to occupy the vacant retail space located within the Wolf Creek Junction Development, located at 15256 Wolf Creek Pkwy., Basehor, Leavenworth County, Kansas and legally described legally described as Lot 3, WOLF CREEK JUNCTION – PHASE 2, in the City of Basehor, according to the recorded plat thereof, in Leavenworth County, Kansas, together with all improvements thereon and appurtenances thereto including a building (the "**Building**") containing approximately 43,000 square feet (collectively, the "**Property**").

WHEREAS, Orscheln has entered into a purchase agreement with Corporate Holdings II, L.L.C., a Kansas limited liability company for the purchase of the Property (the "**Purchase Agreement**"), and the City's agreements as set forth herein (the "**City Incentives**") are a material inducement for Orscheln to consummate such Purchase Agreement and purchase the Property, and but for the approval, availability and receipt of the City Incentives, it would not be economically feasible for Orscheln to purchase the Property, and Orscheln would not purchase the Property nor operate a farm and home store on the Property.

WHEREAS, the City desires to provide such City Incentives, specifically, a Tax Abatement (as defined herein), in pursuit of achieving the public purpose of facilitation and encouraging economic development within the City in cooperation with private enterprise, specifically the occupation of the Property with a farm and home store such as an Orscheln store, which would look to bring private capital investment and create new jobs in the City's economy, in exchange for Orscheln's commitment to open and locate a store at the Property.

WHEREAS, given the seasonal nature of Orscheln's business, store openings typically occur in the Fall or Spring of a calendar year and in the event Orscheln does purchase the Property, Orscheln anticipates opening a farm and home store (the "**Store**") on the Property in the Spring of 2012, and in any event on or before November 1, 2012.

WHEREAS, pursuant to the City's home rule powers set out in the Kansas Constitution, Article 12, Section 5 (b), the City has the authority in pursuit of the above-described public purpose to grant such incentives and enter into this Agreement with Orscheln.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. The above recitals are incorporated herein by reference.

2. City Real Property Tax Abatement. A portion of the real estate taxes assessed against the Property are for the City (the "**City Taxes**"). In the event Orscheln consummates the Purchase Agreement and purchases the Property, the City hereby agrees to abate 95% of all of the City Taxes (the "**Tax Abatement**") from the date of the consummation and closing of the Purchase Agreement (the "**Closing Date**") through the end of December 31, 2019 (the "**Abatement Term**"), prorated for any partial year, and, thus, Orscheln shall be required to pay only 5% of the City Taxes assessed and owed for the Property during the Abatement Term. For example, based on current tax rates provided by the City, for the 2012 calendar year, if the Property had a market value of $1,775,000.00, then the total City Taxes, without the Tax Abatement taken out, would be $13,201.74, the Tax Abatement would be $12,541.60 and, thus, Orscheln would only pay $660.40 for 2012 City Taxes. The City acknowledges that currently in the state of Kansas a portion of any given year's City Taxes can be paid in the month of May of the following year and therefore the City hereby acknowledges and agrees that the Tax Abatement also includes any 2019 City Taxes paid in the year 2020.

3. Store Opening. Orscheln anticipates opening a Store at the Property on or before November 1, 2012. In the event Orscheln does not open a Store at the Property on or before November 1, 2012, the City shall have the option to send a written notice to Orscheln that, unless Orscheln opens a Store on the Property within sixty (60) days, this Agreement shall terminate, in which case, upon Orscheln's receipt of such notice, if Orscheln does not open a Store at the Property within sixty (60) days from the date such notice is delivered, then this Agreement shall terminate at the end of such 60-day period; provided however, if Orscheln does open a Store within such 60-day period, then this Agreement shall not terminate and shall continue in full force and effect.

   Notwithstanding anything to the contrary contained herein, after the Store is opened at the Property, the Store shall be considered open and in operation regardless of any store closure(s) due to 1) closure(s) as part of normal business operations such as taking inventory, 2) renovations or 3) legally observed holidays. Provided further, in the event of any fire or other casualty or condemnation or other event beyond Orscheln's control (each, a "**Casualty Event**") which causes the temporary closure of the Store or some part thereof, the Tax Abatement shall continue, subject to Section 4 below.

   After the Store is opened, if the Store ever closes and remains closed for a period of sixty (60) consecutive days for any reason other than due to a Casualty Event, the City shall have the option to send a written notice to Orscheln that, unless Orscheln opens a

Store on the Property within sixty (60) days, this Agreement shall terminate, in which case, upon Orscheln's receipt of such notice, if Orscheln does not open a Store at the Property within sixty (60) days from the date such notice is delivered, then this Agreement shall terminate at the end of such 60-day period; provided however, if Orscheln does open a Store within such 60-day period, then this Agreement shall not terminate and shall continue in full force and effect.

4. Restoration. During the Abatement Term, in the event that the Building or the Property shall be damaged or destroyed, in whole or in part, by a Casualty Event, and Orscheln, in Orscheln's sole discretion, decides to close the Store for any period of time due to such Casualty Event, in the event Orscheln decides to restore, replace or rebuild the same as needed (or shall cause the same to be restored, replaced or rebuilt), the Tax Abatement shall continue and this Agreement shall remain in full force and effect; provided, however, if Orscheln does not reopen the Store within one (1) year from the date of such closure due to such Casualty Event, the City shall have the option to send a written notice to Orscheln that, unless Orscheln opens a Store on the Property within sixty (60) days, this Agreement shall terminate, in which case, upon Orscheln's receipt of such notice, if Orscheln does not open a Store at the Property within sixty (60) days from the date such notice is delivered, then this Agreement shall terminate at the end of such 60-day period; provided however, if Orscheln does open a Store within such 60-day period, then this Agreement shall not terminate and shall continue in full force and effect.

5. No Default; Limitation of Liability; Remedies. Any failure of Orscheln to open the Store or to keep the Store operating during the Abatement Term shall not constitute a default by Orscheln hereunder and the City shall have no remedy against Orscheln except to have the Tax Abatement cease after the termination of this Agreement in accordance with the provisions herein. In no event shall Orscheln be required to reimburse or pay for any amount of City Taxes that are abated under this Agreement prior to such termination. The City does hereby indemnify and hold harmless Orscheln from and against any and all claims, liabilities or expenses (including reasonable attorneys' fees) imposed upon, asserted against or incurred by Orscheln arising from or related to the Tax Abatement and for Orscheln not, in fact, receiving the benefit of the Tax Abatement during the entire Abatement Period (except for any portion of the Abatement Period in the event of and after the date of any termination of this Agreement as provided herein).

6. Representations of the City. The City represents and warrants that 1) the Tax Abatement has been duly authorized, 2) the City has the

authority to allow the Tax Abatement such that Orscheln shall be required to pay only five percent (5%) of the City Taxes during the Abatement Term, 3) no consent or approval is required to be obtained from, and no action need be taken by or document filed with, any governmental body, including but not limited to the City, or other entity in connection with the execution and delivery by the City or the City of this Agreement and 4) the City has passed or within thirty (30) days after the date of this Agreement shall pass an ordinance approving this Agreement in its entirety and the Tax Abatement as set forth herein.

7. Assignability. Subject to the terms of this Agreement, the parties shall have the right and authority to freely assign this Agreement; PROVIDED, HOWEVER, no such assignment shall relieve or release the assigning party from the primary responsibility for the representations, warranties, promises, agreements and other obligations of the assigning party under this Agreement. Orscheln may sell, transfer, lease or otherwise convey the Property or any interest therein to any third party, including, without limitation, as part of a sale/leaseback transaction, and so long as a farm and home store, home store, hardware store or a store otherwise similar to an Orscheln Farm and Home Store operates on the Property, the parties shall remain liable hereunder and the Tax Abatement shall continue through the Abatement Term. Notwithstanding anything to the contrary contained herein, the parties acknowledge that (a) the term "Store" as used in this Agreement shall mean any farm and home store, home store, hardware store or a store otherwise similar to an Orscheln Farm and Home Store and (b) the term "Orscheln" as used in this Agreement shall mean Orscheln Farm and Home LLC and its successors and assigns.

8. Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and shall be effective upon receipt by personal delivery, private overnight courier or mail, if sent to the following addresses and received by the addressees noted:

if to the City:

City of Basehor
2620 N. 155th Street
Basehor, KS 66007

if to Orscheln:

President
Orscheln Farm and Home LLC
1800 Overcenter Drive
P.O. Box 698
Moberly, MO 65270

with a copy of notices to: Office of General Counsel
2000 U.S. Highway 63 South
PO Box 280
Moberly, MO 65270

Alternatively, all notices, requests, demands and other communications shall also be effective as of three (3) business days after being deposited in the United States mail, certified, return receipt requested, and sent to the address for such party as set forth above. The parties hereto shall have the right, at any time and from time to time during the term of this Agreement, to change their respective addresses for notices by giving the other party hereto written notice thereof.

9. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

10. Captions. The captions are inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope of the Agreement or the intent of any provision thereof, and shall not be used in construing the meaning of any term or provision of this Agreement.

11. Computation of Time. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays; PROVIDED, HOWEVER, that if the date or last day to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday, or state or national holiday, such act or notice shall be timely performed if given on the next succeeding day which is not a Saturday, Sunday, state or national holiday.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and contains all the agreements between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, either oral or in writing, among the parties hereto with respect to the subject matter hereof.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, heirs, personal representatives and assigns of the respective parties hereto.

14. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Kansas applicable to contracts made and performed in Kansas.

15. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and without applying a presumption that the term in the Agreement shall be more strictly construed against one party by reason of the rule of construction that the document is to be construed more strictly against the person who himself, or through his agent, prepared the Agreement, it being agreed the representatives of all parties, the parties themselves, or both have reviewed and participated in the preparation of this Agreement.

16. Modifications. Any modification, change or alteration of this Agreement shall not be binding upon any party unless such modification, change or alteration is in writing and signed by each of the parties.

17. Counterparts. This Agreement may be simultaneously executed in more than one counterpart, each of which shall be an original and all of which shall constitute but one and the same instrument.

18. Ordinance. Within thirty (30) days from the date of this Agreement, the City shall pass an ordinance approving this Agreement in its entirety and the Tax Abatement as set forth herein; provided, however, this Agreement shall be and remain in full force and effect with or without such ordinance.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first mentioned above.

The City The City of Basehor, Kansas	Orscheln Orscheln Farm and Home LLC
By: _____ Name: _____ Title: _____	By: _____ Name: _____ Title: _____

00098721.DOC

ORDINANCE NO. 607

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BASEHOR, KANSAS AND ORSCHELN FARM AND HOME ("DEVELOPER") PROVIDING FOR CERTAIN INCENTIVES TO ENCOURAGE AND ASSIST IN DEVELOPER LOCATING AND OPERATING ITS RETAIL BUSINESS WITHIN THE CITY LIMITS

WHEREAS, the City of Basehor, Kansas (the "City"), desires to facilitate and encourage economic development within the City; and

WHEREAS, in furtherance of this public purpose the City recognizes the need to attract a tenant to occupy the vacant retail space located within the Wolf Creek Junction Development (the "Grocery Building"); and

WHEREAS, the Developer wishes to locate its business within the Grocery Building, provided that the City authorizes the use of certain incentives to increase the likelihood of the retail business' success; and

WHEREAS, the City desires to provide such incentives in pursuit of achieving the public purpose of facilitation and encouraging economic development within the City in partnership with private enterprise, specifically the occupation of the Grocery Building with the Developer's retail business, which retail business will invest private capital and create new jobs in the City's economy, in exchange for the Developer's commitment to locate and operate its retail business within the Grocery Building; and

WHEREAS, pursuant to the City's home rule powers set out in the Kansas Constitution, Article 12, Section 5 (b), the City has the authority in pursuit of the above-described public purpose to grant such incentives and enter into an Economic Development Agreement with the Developer detailing the same.

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

Section 1: That the Governing Body hereby authorizes the Mayor to execute the Economic Development Agreement, attached hereto as Exhibit A.

Section 2: That this ordinance shall be construed as follows:

A. Liberal Construction. The provisions of this ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.

B. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed ordinance set out herein, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this or other ordinances.

Section 3: That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Basehor, Kansas as provided by law.

PASSED by the City Council this 7th day of November, 2011.

APPROVED by the Mayor this 7th day of November, 2011.

SEAL

_____
Terry Hill, Mayor

ATTEST:

_____
Corey Swisher, City Clerk

APPROVED AS TO FORM:

_____
Shannon M. Marcano, City Attorney